80-1602

No.

Office-Supreme Court, U.S.
FILED
MAR 23 1981
ALEXANDER L. STEVAS
CLERK

In the
Supreme Court of the United States
OCTOBER TERM, 1980

THE ILLINOIS STATE DENTAL SOCIETY, ET AL.,
Petitioners,

vs.

HELEN SCHILLER, ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

RUSSELL M. PELTON,
Counsel of Record

MARY PATRICIA CHAPIN
CRAIG A. VARGA
PETERSON, ROSS, SCHLOERB & SEIDEL
200 East Randolph Drive, Suite 7300
Chicago, Illinois 60601
(312) 861-1400
Attorneys for Petitioners.

The Scheffer Press, Inc.—(312) 263-6850

QUESTIONS PRESENTED FOR REVIEW

I. Whether the decision of the Court of Appeals conflicts with this Court's dismissal of an appeal in an earlier case presenting the same issues as those in the instant case.

II. Whether in assessing the effect that this Court's dismissal of a state court appeal in an earlier case had upon the instant case, the Court of Appeals departed from decisions of this Court by not giving proper consideration to the opinion of the state court.

The parties to this proceeding are as follows:

Plaintiffs-Respondents:

Helen Schiller, Walter Coleman, Uptown Peoples Community Service Center, an Illinois not-for-profit corporation; Uptown Peoples Community Health Services Board of Directors, Inc., an Illinois not-for-profit corporation; Samuel Abernathy and other individuals listed on Exhibit "47" of the Complaint; and Gary Hinton, Walter Dausch, Sam Amenta, Jesse Gaudard, Donald Martin, Arthur Potts, Nick DeAngelis, Mark Kuper, Robert Schmitt, Elmer E. Higgerson, Caroline Basony, Edward Umbright, Thomas Gaura, Robert Kopfer, Ira Jordan, Robert A. Martin, William Norris, Irving Weiss, Robert Yonkee, Hamazasb Mkrdichian, Joseph E. Hoch, Jerome Getsla, Joseph Vinci, Edward Davisson, Eli Sutker, Wilson G. Sargeant, Bruno Alonzo, George Bartmanowski, Ray Andrews, John Bane, Adelor Guiliano, Mitch Bronner and Anthony Carbone

Defendants-Petitioners:

The Illinois State Dental Society, an Illinois not-for-profit corporation, The Chicago Dental Society, an Illinois not-for-profit corporation; Julius W. Ulaneck, Dr. Louis V. Fourie, Dr. Frank A. Schroeder, Dr. Dominic J. Catrambone, Dr. Bert W. Gilbert, Dr. Grant A. Maclean, Dr. Lewis L. Weil, Dr. Robert H. Griffiths, Dr. Raffaele Suriano, Dr. John Madonia, Dr. Thomas Quinn, Dr. Edward Troutt, Dr. David Valentine, Dr. Thomas Wallen, Dr. George Kelly and Dr. Raymond P. Kotz.

TABLE OF CONTENTS

PAGE

Table of Authorities ii

Citation to Opinions Below 1

Jurisdictional Statement 2

Statutory Provisions Involved 2

Statement of the Case 2

Reasons for Granting the Writ 6

1. The Decision and Order of Judgment of the Seventh Circuit Court of Appeals is in Direct Conflict with this Court's Dismissal of an Appeal, for Want of a Substantial Federal Question, in *AAA Dental Laboratories, Inc. v. Illinois Ex Rel Chicago Dental Society,* 352 U.S. 863 (1956) 6

2. In Assessing the Tffect of this Court's Dismissal of the *AAA* Appeal Upon the Instant Case, the Court Below Departed from Previous Decisions of this Court By Not Giving Proper Consideration to the State Court Opinion and Judgment Appealed from in AAA 13

Appendix 1a

Per curiam order and judgment; United States Court of Appeals for the Seventh Circuit, filed December 3, 1980, rehearing denied January 27, 1981 ..... 1a

Denial of Petition for Rehearing, dated January 27, 1981 ..... 9a

Memorandum opinion and order, United States District Court, Northern District of Illinois, Eastern District, The Honorable John Powers Crowley, filed April 6, 1979 ..... 10a

PAGE

Judgment Order, United States District Court, Northern District of Illinois, Eastern Division, The Honorable John Powers Crowley, dated April 6, 1979 ..... 34a

Conversion Table re: Renumbering of Illinois Dental Practice Act 36a

Relevant Sections of the Illinois Dental Practice Act 37a

Pleadings in *AAA Dental Laboratories, Inc. v. Illinois ex rel Chicago Dental Society*, 352 U.S. 863 (1956) 47a

Appellant's Statement as to Jurisdiction: 47a

Appendix (including Opinion of Illinois Supreme Court in *People v. AAA Dental Laboratories, Inc.*, 8 Ill.2d 330, 134 N.E.2d 285 (1956) 71a

Motion by Appellees To Dismiss Appeal or to Affirm Judgment 111a

Brief Opposing Motion to Dismiss or affirm ..133a

Petition for Rehearing 149a

TABLE OF AUTHORITIES

Cases:

AAA Dental Laboratories, Inc. v. Illinois ex rel Chicago Dental Society, 352 U.S. 863 (1956) ..5, 6, 9, 12

Canfield v. Wisc. Bd. of Attys Professional Comp., 490 F.Supp. 1286 (W.D. Wis. 1980) 15

Chicago Sheraton Corp. v. Zaban, 593 F.2d 808 (7th Cir.), *cert. dismissed*, 444 U.S. 911 (1979) .....

Colorado Springs Amusement, Ltd. v. Rizzo, 524 F.2d 571 (3d Cir. 1975), *cert.denied*, 428 U.S. 913 (1976) 12

PAGE

Cordak v. Reuben H. Donnelley Corp., 363 U.S. 299 (1961) 12

Doe v. Hodgson, 478 F.2d 537 (3d.Cir.), *cert. denied*, 414 U.S. 1096 (1973) 12

Duncan v. Ward, 225 F.Supp. 195 (N.D.Ill. 1963)..11, 12

Elections Bd. v. Socialist Workers Party, 440 U.S. 173 (1979) 12

Govt. of Virgin Is. v. 19.623 Acres of Land, 536 F.2d 566 (3d Cir. 1976) 15

Hawaiian Tel. Co. v. State of Hawaii, 614 F.2d 1197 (9th Cir.) *cert.denied*, ... U.S. ....., 100 S.Ct. 2965 (1980) 12

Hicks v. Miranda, 422 U.S. 332 (1975) 6, 7, 15

Lees v. Oster, 8 U.2d 141, 329 P.2d 648 (1958) 7

Mandel v. Bradley, 432 U.S. 173 (1977) 12, 14, 15, 16

McKeesport Area School Dist. v. Pa. Dept. of Educ. ..... U.S. ..... 64 L.Ed.2d 831 (1980) 12, 15

People v. AAA Dental Laboratories, 8 Ill.2d 230, 134 N.E.2d 285 (1956) 8, 14

People ex rel Illinois State Dental Society v. Vinci, 35 Ill. App.3d 474, 342 N.E. 206 (1976) 6

State v. Clark, 252 Ia. 578, 107 N.W.2d 726, *cert. denied*, 366 U.S. 949 (1961) 7

Whitlow v. Hodges, 539 F.2d 582 (6th Cir.), *cert. denied*, 429 U.S. 1029 (1976) 13

Statutes:

Sec. 1a, Ill. Dental Prac. Act (Ill.Rev.Stat., 1977, ch. 111, sec. 2202) 3, 4

PAGE

Sec. 3, Ill. Dental Prac. Act (Ill.Rev.Stat., 1977, ch. 111, sec. 2206) 4

Sec. 5, Ill. Dental Prac. Act (Ill.Rev.Stat., 1977., ch. 111, sec. 2217) 4, 9

Sec. 5a, Ill. Dental Prac. Act (Ill.Rev.Stat., 1977, ch. 111, sec. 2218) 4, 8, 9

Sec. 5b, Ill. Dental Prac. Act (Ill.Rev.Stat., 1977, ch. 111, sec. 2219) 4

Sec. 16, Ill. Dental Prac. Act (Ill.Rev.Stat., 1977, ch. 111, sec. 2242) 4

Sec. 17a, Ill. Dental Prac. Act (Ill.Rev.Stat., 1977, ch. 111, sec. 2244) 6

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No.

THE ILLINOIS STATE DENTAL SOCIETY, ET AL.,
Petitioners,

vs.

HELEN SCHILLER, ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To: THE HONORABLE CHIEF JUSTICE
OF THE UNITED STATES
AND THE ASSOCIATE JUSTICES
OF THE SUPREME COURT
OF THE UNITED STATES

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment and order of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on December 3, 1980, which reversed and remanded the decision of the District Court.

OPINIONS BELOW

Neither the District Court's memorandum opinion nor the Seventh Circuit Court of Appeals' per curiam opinion

have been published. These opinions are set out in the Appendix, p. 1a and 10a, respectively, *infra.*

JURISDICTION

The judgment of the Court of Appeals for the Seventh Circuit was entered on December 3, 1980. A timely petition for rehearing was denied on January 27, 1981, and this petition for certiorari was filed within ninety days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1254(1).

STATUTORY PROVISIONS INVOLVED*

---

* These statutes are printed in the Appendix, p. 37a *infra.*

Sec. 1a, Ill. Dental Prac. Act (Ill. Rev. Stat., 1977, ch. 111, sec. 2202)

Sec. 3, Ill. Dental Prac. Act (Ill. Rev. Stat., 1977, ch. 111, sec. 2206)

Sec. 5, Ill. Dental Prac. Act (Ill. Rev. Stat., 1977, ch. 111, sec. 2217)

Sec. 5a, Ill. Dental Prac. Act (Ill. Rev. Stat., 1977, ch. 111, sec. 2218)

Sec. 5b, Ill. Dental Prac. Act (Ill. Rev. Stat., 1977, ch. 111, sec. 2219)

Sec. 16, Ill. Dental Prac. Act (Ill. Rev. Stat., 1977, ch. 111, sec. 2242)

Sec. 17a, Ill. Dental Prac. Act (Ill. Rev. Stat., 1977, ch. 111, sec. 2244)

STATEMENT OF THE CASE

On October 4, 1978, plaintiffs in this action, various dental technicians ("denturists") and various non-denturist community organizations and other individuals,

brought suit[1] against the Illinois State Dental Society and its program director, the Chicago Dental Society, the Illinois Dental Laboratory Association[2] and various individual dentists[3]. Plaintiffs, none of whom are licensed dentists, challenged the constitutionality and legality of the Illinois Dental Practice Act, Ill.Rev.Stat. 1977, Ch. 111, Sec. 2202, et seq., and the methods used to enforce it.

As noted by the District Court:

> The Illinois Dental Practice Act, Ill.Rev.Stat. Ch. 111, Sec. 2202 et seq., is a comprehensive statutory scheme regulating dentistry and various aspects of dental health care in Illinois. The act prohibits the practice of dentistry without a license. Among acts which constitute the practice of dentistry are taking of impressions, replacing teeth, and making and repairing dental protheses. However, the Act exempts, from that definition, the extraoral construction or repair of dentures and bridges, or replacement of teeth when those services are requested by a licensed dentist, and that request is made on a written work order. Soliciting or providing those services without first supplying or obtaining a written work order constitutes a misdemeanor. In addition, the act pro-

---

[1] The court below incorrectly noted that the instant action was brought as a "class action", which it was not. *Schiller v. Illinois State Dental Society*, No. 79-1529, slip op. (7th Cir. Dec. 3, 1980) [hereinafter cited as Op., Ct. of App.] (Appendix, p. 1a)

[2] The Illinois Dental Laboratory Association was not named as a defendant in the case caption, but was so named in several counts of the Complaint.

[3] As noted by the court below, "the jurisdictional basis for this action has been imprecisely stated in the complaint". Op., Ct. of App. (Appendix, p. 2a). It appears, however, that jurisdiction is asserted under 28 U.S.C. Sec. 1343 and 28 U.S.C. Sec. 1331. Id.

hibits public advertisement of the products or services of firms performing extraoral work for licensed dentists.

Schiller v. Illinois State Dental Society, No. 78 C 3936, slip.op. (N.D. Ill. April 6, 1979) [hereinafter Op., Dist. Ct.] (Appendix, p. 12a-16a) (footnotes to Sections 1a, 3, 5, 5a, 5b, and 16 omitted).

The denturist plaintiffs' constitutional challenges were that the Dental Practice Act violates denturists' equal protection and due process rights by precluding them from practicing their alleged profession directly with the public. Both the denturist and non-denturist plaintiffs raised a number of other federal and state claims as well,[4] all of which were found untenable by the District Court,[5] and none of which were addressed by the Seventh Circuit.

Defendants moved to dismiss the complaint on a variety of grounds, their principal contention being that all substantive elements of the complaint had been previously raised and decided adversely to plaintiffs on a number of occasions by both the federal and state courts. Defendants also argued that the non-denturist plaintiffs lacked standing to sue.

On motion, the District Court dismissed Plaintiffs' complaint in its entirety and entered judgment for de-

---

[4] *See* Op., Dist.Ct. (Appendix, p. 18a) for recitation of other claims raised. The non-denturist plaintiffs' claims went only to alleged federal antitrust violations.

[5] *See* Op., Dist.Ct. (Appendix, p. 32a). Having found no substantial federal claim anywhere in the complaint, the District Court declined to exercise pendent jurisdiction over plaintiffs' state law claims. Id. at n.18 (Appendix, p. 32a)

fendants, the court holding that since it was "unable to find a tenable claim for violation of the Constitution or any law of the United States", no "substantial federal question" had been presented. Op., Dist.Ct. (Appendix, p. 32a). In addition, the court specifically found that the Dental Practice Act's provisions regarding dentists' and denturists' relative roles in the provision of dental services met the due process and equal protection tests of rationality.

On appeal, the Seventh Circuit, after examining those cases in which the Dental Practice Act had been challenged in previous litigation, held that this Court's dismissal of an appeal for want of a substantial federal question in *AAA Dental Laboratories, Inc. v. Illinois ex rel Chicago Dental Society*, 352 U.S. 863 (1956), was not dispositive of the instant case, even though *AAA* had involved a denturist attack on the Act premised on due process and equal protection grounds. The Seventh Circuit also held that the District Court had erred in dismissing the complaint without first making some evidentiary inquiry to determine whether the challenged sections of the Act were "rational" for equal protection and due process purposes. On that basis, the Seventh Circuit reversed and remanded the case for an evidentiary inquiry. The court did not address any matters beyond the denturist plaintiffs' due process and equal protection challenges to the Act's prohibitions on their providing denture care directly to the public. Therefore, the court did not disturb the District Court's dismissal of the balance of plaintiffs' complaint.

REASONS FOR GRANTING WRIT

I

THE DECISION AND ORDER OF JUDGMENT OF THE SEVENTH CIRCUIT COURT OF APPEALS IS IN DIRECT CONFLICT WITH THIS COURT'S DISMISSAL OF AN APPEAL, FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION, IN AAA DENTAL LABORATORIES, INC. V. ILLINOIS EX REL CHICAGO DENTAL SOCIETY, 352 U.S. 863 (1956).

In concluding that this Court's dismissal of an appeal in *AAA* was not dispositive of the instant case, the Seventh Circuit decided a question squarely in conflict with this Court's previous decision in *AAA*. The issues in the instant case being precisely those raised in *AAA*, the Seventh Circuit should have accorded this Court's dismissal in *AAA* proper precedential effect, and dismissed the instant case under *Hicks v. Miranda*, 422 U.S. 332 (1975). By failing to do so, the Seventh Circuit has left open to re-litigation matters clearly and unquestionably resolved by this Court in *AAA*, by a lower federal court,[6] and by the courts of the State of Illinois.[7] The practical effect of this decision is to afford certain plaintiff-denturists, whose "profession" has been deemed to constitute a "public nuisance"[8] and fully one-third of whom have been found to have practiced dentistry without

---

[6] *See* notes 13 and 14 and accompanying text, *infra*.

[7] *See. e.g., People ex rel Illinois State Dental Society v. Vinci*, 35 Ill.App.3d 474, 342 N.E.2d 206 (1976).

[8] *See* Sec. 17a of the Illinois Dental Practice Act, (Ill. Rev.Stat., 1977, Ch. 111, Sec. 2244) (Appendix, p. 46a).

a license in Illinois, an opportunity to further ply their trade upon an unsuspecting public under an ill-conceived cloak of legitimacy.

Yet another disturbing consequence of the lower court's decision is its potential impact on the dental practice acts of other states. Both the Illinois act and the *AAA* decision have long been given considerable accord by the courts of other states. *See State v. Clark,* 252 Ia. 578, 107 N.W.2d 726, *cert. denied* 366 U.S. 949 (1961); *Lees v. Oster,* 8 Utah 2d 141, 329 P.2d 648 (1958). In addition, the Illinois State Dental Society, a defendant here, has long been a national leader in advocating that interests of public health demand that the provision of dental prostheses (dentures) not be divorced from the provision of clinical dental care. The relationship which this case bears to that ongoing national effort offers yet another reason why this Court should grant the writ of certiorari requested.

Under *Hicks v. Miranda,* supra, dismissals of appeals for want of a substantial federal question are dispositions on the merits, and are binding on lower federal courts. Applicability of the *Hicks* doctrine requires a finding that issues in a later case are the same as those presented to this Court in an earlier action ending in either a summary affirmance or dismissal for want of a substantial federal question. Had the Seventh Circuit properly examined the issues in *AAA* and applied the *Hicks* doctrine here, it would have agreed with the District Court's dismissal of this action.

The court below concluded that:

> In the instant case the issue is whether due process and equal protection are violated because denturists

> are prevented from providing denture care and advertising directly to the public.

Op., Ct. of App., at n.2 (Appendix, p. 7a).

The court also stated that, in *AAA*,

> The due process issue was whether the statute was rationally related to its purpose where the right of a dental technician to practice his occupation depended solely on whether he was employed by a dentist, without there being any statutory qualifications for technicians or requirement that a dentist supervise their work. The equal protection issue also concerned the lack of statutory qualifications for dental technicians, allegedly resulting in arbitrary decisions by dentists as to which technicians would be employed.

Id. at n.2. (Appendix, p. 7a).

Given those characterizations, the Seventh Circuit concluded that the issues in the respective cases were somehow "different". Defendants submit, however, that the court misapprehended the true nature of the issues in *AAA*, and that the purported difference between the cases is a "difference without a distinction."

It is evident from the opinion of the Illinois Supreme Court in *AAA* that the equal protection and due process issues there were whether prohibiting those persons not trained in dentistry from dealing directly with the public or from advertising to the public was reasonably related to preserving the public health.[9] In its opinion, 8 Ill.2d at 331, the Illinois court stated that: "The controversy centers primarily upon Section 5(a) and paragraphs 8

---

[9] *See* the court's discussion in *People v. AAA Dental Laboratories, Inc.*, at 8 Ill. 2d 337-38, 134 N.E.2d 287 (Appendix, p. 104a).

and 9 of Sec. 5," which sections deal respectively with prohibiting dental technicians from advertising to the public, from taking impressions for dentures directly for the public, and from constructing or repairing dentures directly for the public. *See,* respectively, Ill. Rev. Stat. 1977, Ch. 111, Sec. 2218, 2217(8) and 2217(9).[10] Since the Illinois Supreme Court decided in favor of the *AAA* plaintiffs (the principal one of which was the Chicago Dental Society, a defendant in the instant case), it follows necessarily that the state court's decision upheld the constitutionality of the aforementioned sections. The jurisdictional statement filed on appeal to this Court by the *AAA* defendants (dental technicians) acknowledged as much, for it stated that "the basic sections assailed are subparagraphs 8 and 9 of Sec. 5 and separate section 5(a)." Juris, Statement in *People v. AAA Dental Laboratories,* OT. 1956, No. 311, p. 3. (Appendix, p. 53a). Hence, the same Dental Practice Act prohibitions against direct dealing which were upheld in the face of due process and equal protection challenges by the Illinois Supreme Court in *AAA* were before this Court on appeal in that case.

Great effort was made in the "Questions Presented" section of the dental technicians' Jurisdictional Statement in *AAA* to characterize the Dental Practice Act as establishing dentists as only perfunctory intermediaries between technicians and the public. Not surprisingly,

---

[10] The Illinois Dental Practice Act has remained unchanged in all relevant respects from the time the *AAA* case was brought until the present time. Its sections, however, were renumbered in 1977. For the Court's ease of reference, a conversion table is attached. (Appendix, p. 36a).

therefore, the technicians' questions were self-servingly and argumentatively phrased in terms of employment or non-employment by a dentist being the arbiter of compliance with the Act. Despite the biased phraseology of those questions, they nevertheless stand for the proposition that, under the Act, technicians may not deal directly with, or advertise to, the public. Technicians are limited by the Dental Practice Act, for reasons of public health, to working only with those whom the legislature *has* decided have sufficient training to deal with the public—dentists. That the formulation of the questions presented attempted to obscure this fact did not limit the actual scope of the challenge made in *AAA*, one which included all those provisions noted both by the Illinois Supreme Court and by the technicians as being at issue. In short, the Jurisdictional Statement's "Questions Presented" section cannot be construed as including anything less than a challenge to the basic relationship between technician, dentist, and the public under the Act. Even a cursory reading of plaintiffs' Motion to Dismiss or Affirm in *AAA* reveals as much — *i.e.*, that the issues in *AAA* went to the reasonability of the state's exercise of its police power vis-a-vis the Dental Practice Act's prohibitions against direct dealing by non-dentists with the public.[11] To conclude that anything less was in issue is to take, as the court below has, an unduly strained and incorrect view of the *AAA* case.

---

[11] *See e.g.*, Appellee's Motion to Dismiss Appeal or to Affirm Judgment in *People v. AAA Dental Laboratories*, OT, 1956, No. 331, p. 9 (Appendix, p. 123a) ("Since the Illinois Statute prohibits dental laboratories from dealing directly with public . . ."), and p. 10 (Appendix, p. 124a) (Section entitled "The Federal Question Herein Is Not a Substantial One.")

The due process and equal protection challenges presented in the instant case raise exactly the same issues as those in *AAA*. There is nothing encompassed by the provision of "denture care,"[12] in the instant case, that was not included within the technician's argument in *AAA* that subparagraphs 8 and 9 of Sec. 5 and Sec. 5(a) of the Dental Practice Act kept them from practicing their "occupation". Only in the court below's failure to comprehend the nature of the *AAA* issues does any "difference" arise between the two cases.

One lower court has correctly perceived the nature of the issues raised in *AAA* and has given effect to this Court's dismissal of the *AAA appeal*. In *Duncan* v. *Ward*, 225 F.Supp. 195 (N.D.Ill. 1963), the plaintiff dental technicians brought a class action suit challenging the Dental Practice Act on due process and equal protection grounds.[13] In granting the defendants'[14] motions for dismissal there, the court stated that:

> As defendants point out, the want of substantiality of a federal question is here proved 'because its unsoundness so clearly results from the previous decisions of the Federal Supreme Court as to foreclose

---

[12] Op., Ct. of App., at n.2 (Appendix, p. 7a).

[13] The court in *Duncan*, 225 F.Supp. at 201, noted that: "It is apparent to the Court that the plaintiffs are attempting to use the same identical arguments to overthrow legislation . . . which has heretofore been universally upheld as constitutional, both under the Federal and state constitutions."

[14] The Illinois State Dental Society, a defendant in the instant action, intervened as a defendant in *Duncan* and filed a motion for dismissal, relying on this Court's dismissal of the *AAA* appeal. *See Duncan*, 225 F.Supp. at 196, n.1 and accompanying text.

> the subject and leave no room for the inference that the question sought to be raised can be the subject of controversy.' (Citation omitted)
>
> Since it has heretofore been determined that there was a want of a 'substantial federal question' in both the *AAA Dental Laboratories, Inc.* and the *Cordak* v. *Reuben H. Donnelley Corp.* cases, supra, the court concludes that there is no legal basis advanced by plaintiffs which differentiates this controversy from those cases, and such 'substantial federal question' is also absent here.

225 F.Supp. at 201.

Application of this Court's dismissal in *AAA* to the instant case does not require the strained extrapolation that sometimes vexes lower courts when the facts supporting a holding subsequently accorded a summary adjudication by this Court differ from the facts in the case to which that holding is later raised as a bar. *Compare Elections Bd. v. Socialist Workers Party,* 440 U.S. 173 (1979) (facts divergent) and *Mandel v. Bradley,* 432 U.S. 173 (1977) (facts divergent) with *McKeesport Area School Dist. v. Pa. Dept. of Educ.,* ..... U.S. ....., 64 L.Ed.2d 831 (1980) (facts similar); *Hawaiian Tel. Co. v. State of Hawaii,* 614 F.2d 1197 (9th Cir.), *cert. denied* ..... U.S. ....., 100 S.Ct. 2965 (1980) (facts similar); *Colorado Springs Amusement, Ltd. v. Rizzo,* 524 F.2d 571 (3d Cir. 1975), *cert. denied* 428 U.S. 913 (1976) (facts similar) and *Doe v. Hodgson,* 478 F.2d 537, (3d Cir.) *cert. denied* 414 U.S. 1096 (1973) (facts similar). On the contrary, in the instant case the factual circumstances are such that the nature of the parties, relevant statutes, bases of constitutional challenge, and standard of review are identical to those in the *AAA* case.[15] Even

---

[15] And to those in *Duncan v. Ward, supra.*

the manner of proof called for to sustain the rationality of the Dental Practice Act by the Seventh Circuit is identical to that offered in *AAA*. The Seventh Circuit has remanded this case for an evidentiary inquiry into whether the Dental Practice Act's prohibitions are rationally related to its asserted purpose of protecting the public health. In *AAA*, the Illinois Supreme Court focused on precisely that same question, stating that:

> Voluminous testimony establishes beyond doubt that the furnishing of artificial dentures is intimately related to the general health of the patient . . . this relationship justifies legislative regulation of dentistry, including prosthetic dentistry. . . .

8 Ill. 2nd at 333-34, 134 N.E. 2nd at 228

In view of the foregoing, it is difficult to imagine an instance in which application of this Court's dismissal in *AAA* could be any more appropriate than in the instant case. Indeed, the present action seems to be "on all fours" with the issues raised in *AAA*. *See Whitlow* v. *Hodges*, 538, F.2d 582 (6th Cir.), *cert. denied*, 429 U.S. 1029 (1976). That the court below reached a contrary decision offers a compelling reason for this Court to grant the Writ of Certiorari requested.

II

IN ASSESSING THE EFFECT OF THIS COURT'S DISMISSAL OF THE AAA APPEAL UPON THE INSTANT CASE, THE COURT BELOW DEPARTED FROM PREVIOUS DECISIONS OF THIS COURT BY NOT GIVING PROPER CONSIDERATION TO THE STATE COURT OPINION AND JUDGMENT APPEALED FROM IN AAA.

The court below, at n.2 (Appendix, p. 6a-7a), assessed the effect that two previous dismissals of appeals by

this Court had upon the present action. In concluding that those decisions were not controlling on the instant case, the Seventh Circuit stated that:

> We have examined the jurisdictional statements and pleadings submitted on appeal to the Supreme Court in those cases, and we conclude that the issues on which the court based its dismissals are not dispositive of the instant case.

Op., Ct. of App. at n.2 (Appendix, p. 7a).

and that:

> The rationale of a summary adjudication may not be gleaned from the opinion below.

Id.

The above statements establish beyond doubt that the Seventh Circuit omitted from its consideration the judgment and opinion of the Illinois Supreme Court in *People v. AAA Dental Laboratories,* 8 Ill.2nd 330, 134 N.E. 2nd 285 (1956). This omission was both contrary to established caselaw and very likely responsible for the Seventh Circuit's erroneous conclusion that this Court's dismissal of the appeal in *AAA* was not controlling on the issues in the instant case.

To state, as the court below did, that "the rationale of a summary adjudication may not be gleaned from the opinion below" is a misquotation and misconstruction of the case cited by the court, *Mandel v. Bradley,* 432 U.S. 173 (1977). The actual wording of the cited passage is as follows: "Because a summary affirmance is an affirmance of the judgment only, the rationale of the affirmance may not be gleaned *solely* from the opinion below." 432 U.S. at 176 (emphasis supplied).

This passage from *Mandel* clearly indicates that the opinion of a court below, while not the only matter appropriate for consideration in assessing a summary adjudication, must certainly be considered, a proposition clearly the obverse of that conveyed by the lower court's omission of the word "solely" in its opinion. Applied to the instant facts, then, the Seventh Circuit's failure to properly consider the Illinois Supreme Court's opinion in *AAA* amounted to a renunciation of this Courts decision in *Mandel*, rather than adherence to it.

Both this Court and lower federal courts have stated, either explicitly or implicitly, that consideration of matters beyond an appellant's jurisdictional statement is necessary and proper in assessing the true import of a summary adjudication of this Court. Most recently, in *McKeesport Area School Dist. v. Pa. Dept. of Educ.*, 64 L.Ed. 2d 831 (1980), Mr. Justices Blackmun and Brennan, in a concurring opinion, went to great lengths in attempting to determine precisely what issues were before this Court in an appeal which the Court dismissed for want of a substantial federal question. Their inquiry went not only to the jurisdictional statement and pleadings filed with this Court, or to the opinion of the court below, but also to the holdings of previous state court cases cited in the state court decision appealed from. That this Court considers such matters relevant to the nature of issues before the Court in a *Hicks* situation implies that lower courts should likewise expand their inquiries in trying to resolve the difficult question of the "reach and content" of summary affirmances or dismissals of appeals by this Court. *See also Govt. of Virgin Is. v. 19.623 Acres of Land*, 536 F.2d 566, 571 (3d Cir. 1976) and *Canfield v. Wis. Bd. of Attys Professional Comp.*, 490

F.Supp. 1286, 1290-91 (W.D. Wis. 1980), both of which reflect searching inquiries by lower federal courts to ascertain the issues decided in a summary adjudication of the U.S. Supreme Court.

The Seventh Circuit itself, in a recent case, had occasion to consider the specific point raised here. In *Chicago Sheraton Corp. v. Zaban*, 593 F.2d 808 (7th Cir.), *cert. dismissed*, 444 U.S. 911 (1979), the Seventh Circuit did not feel compelled to limit its consideration to only the jurisdictional statement and pleadings submitted to the U.S. Supreme Court, but looked as well to "the opinion of the Illinois Supreme Court, and the briefs filed by the parties before that court." 593 F.2d at 809.

Had the Seventh Circuit correctly applied *Mandel* and given proper consideration to the opinion of the state court in *AAA*, much less to the briefs submitted to that court, it would have recognized that the issues in *AAA* were precisely the same as those at hand in the instant case — whether the Dental Practice Act's prohibitions against direct dealing by non-dentists with the public, or advertising by non-dentists to the public, are violative of due process and equal protection rights. That the Seventh Circuit strayed from established principles of this Court and other federal courts is an additional reason for granting the Writ of Certiorari requested.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Seventh Circuit.

Respectfully submitted,

RUSSELL M. PELTON
Counsel of Record

MARY PATRICIA CHAPIN
CRAIG A. VARGA
PETERSON, ROSS, SCHLOERB & SEIDEL
200 East Randolph Drive, Suite 7300
Chicago, Illinois 60601
(312) 861-1400
Attorneys for Petitioners.

MARCH 20, 1981

APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Argued October 31, 1979
December 3, 1980

Before

Hon. THOMAS E. FAIRCHILD, *Chief Judge*
Hon. LUTHER M. SWYGERT, *Circuit Judge*
Hon. ROBERT A. GRANT, *Senior District Judge**

No. 79-1529

HELEN SCHILLER, et al.,
Plaintiffs-Appellants,

vs.

ILLINOIS STATE DENTAL SOCIETY, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 78 C 3936
JOHN POWERS CROWLEY, *Judge.*

ORDER

At issue is the constitutionality of the Illinois Dental Practice Act, Ill. Rev. Stat. ch. 111, §§ 2202 *et seq.* The district court dismissed the class action complaint for lack of a substantial federal question. Because we conclude that a substantial federal claim has been stated, we reverse and remand for further proceedings.

---

* Sitting by designation.

I

At the outset we note that the jurisdictional basis for this action has been imprecisely stated in the complaint. Section 1983 jurisdiction is alleged but no "state action" is specified and no state official is a party defendant. The complaint does allege, however, that the defendants Illinois Dental Society, its officers, and Julius W. Ulaneck are "prosecuting actions" against plaintiff denturists. Section 2244 of the Illinois Dental Practice Act, Ill. Rev. Stat. ch. 111, § 2244, ("the Act"), provides:

> The Attorney General for the State of Illinois, the State's Attorney for any county in the State, *or any resident citizen* may maintain an action in the name of the people of the State of Illinois to perpetually enjoin any person from so unlawfully practicing dentistry and from doing, committing or continuing of such unlawful act.

(emphasis added.)

We infer that plaintiffs are asserting jurisdiction under section 1343, 28 U.S.C. § 1343, on the basis that the defendants by enforcing the Act under section 2244 are acting under color of state law.

In addition, a basis for jurisdiction under section 1331, 28 U.S.C. § 1331 though seemingly present in light of plaintiffs' allegation that they have suffered more than $1,000,000 in damages, is not set out in the complaint. On remand, plaintiffs must amend their complaint to state more clearly the jurisdictional bases for this action.

II

Plaintiffs contend that the Illinois Dental Practice Act is unconstitutional as violative of both equal protection and due process. According to section 2218 of the Act, denturists may construct and repair dentures, bridges, or replacements "exclusively, directly and solely for licensed members of the dental profession, and not for the public or any part thereof." In addition, denturists may not ad-

vertise to the public "in any manner" the appliances constructed and repaired or the services rendered but may advertise only in dental trade journals and professional publications. Ill. Rev. Stat. ch. 111, § 2218. Violations of the Act are Class A misdemeanors. Ill. Rev. Stat. ch. 111, § 2242.

Plaintiffs argue that permitting dentists but not denturists to provide denture care and advertise directly to the public is a violation of equal protection. Our first task is to determine the proper standard of review. The right to practice the profession for which one is trained, plaintiffs argue, is a fundamental right, making strict judicial scrutiny the appropriate standard. We do not agree. In *Massachusetts Board of Retirement* v. *Murgia*, 427 U.S. 307 (1976), the Supreme Court held that there was no fundamental right to government employment. Although our case involves private rather than public employment, we agree with the trial judge that *Murgia* forecloses our deciding that plaintiffs have a fundamental right to practice denturism. Therefore we must apply the traditional rational basis test rather than strict scrutiny in examining the challenged statute.

Plaintiffs also allege that the statute violates due process. Because we hold that the denturists have not been denied a fundamental right, the due process challenge must be decided on the basis of whether there is a rational relationship between the prohibitions in the statute and the legitimate state interests, if any, the statute was enacted to serve. Although the due process and equal protection issues are conceptually different, for practical purposes, they are here indistinguishable. If the statute is rational, it must be upheld.

The express purposes of the Act are to protect the public health, safety and welfare and to further public trust in the dental profession. Ill. Rev. Stat. ch. 111, § 2202. Those state interests are unquestionably legitimate and if they are furthered by the statute, then it is consti-

tutional even if the classifications contained therein are imperfect, *Dandridge* v. *Williams,* 397 U.S. 471 (1970), and even if the law is not "in every respect logically consistent with its aims. . . ." *Williamson* v. *Lee Optical Co.,* 348 U.S. 483, 487 (1954).

The problem we face is that there is simply no basis in the record for deciding whether there is a rational relation between the statutory prohibitions and objectives. Because the case was dismissed on the basis of the pleadings, we are presented with no facts on which to judge the issues or apply the law. Plaintiffs allege that by prohibiting denturists from providing denture care directly to the public, the Act results in no or inadequate denture care for a large segment of our elderly and edentulous population. Simply stated, plaintiffs assert that the public health, safety and welfare is only harmed by this statute. If that is true, the statute is not rationally related to its goal. We believe that some evidentiary inquiry is necessary to decide that issue fairly. In addition, it is not clear from the pleadings that the statute's other stated purpose—to further respect for the dental profession—is rationally related to prohibiting denturists from practicing denturism. The State's requirements for the licensing of dentists are not challenged; nor do plaintiffs claim that denturists are qualified to practice dentistry. In a similar fact situation, the Fifth Circuit held that plaintiff chiropractors, who challenged the constitutionality of prohibiting the practice of chiropractic in Louisiana, could not be denied the opportunity to demonstrate that outlawing the practice of chiropractic had no rational basis:

> As we understand, the plaintiffs can claim no right to practice medicine as that practice is engaged in by medical doctors and surgeons. The question is whether they can be constitutionally excluded from the practice of chiropractic. . . .

England v. *Louisiana State Board of Medical Exam.,* 263 F.2d 661, 665 (5th Cir. 1959). As here, that case had been dismissed by the district judge on the basis of the plead-

ings for lack of a substantial federal question. The Fifth Circuit, while acknowledging that the plaintiffs' burden was great, reversed and remanded for a determination on the basis of an evidentiary inquiry.

In *Gault* v. *Garrison,* 569 F.2d 993 (7th Cir. 1977), this court faced an action by a public school teacher who alleged that mandatory retirement at age 65 violated her equal protection and due process rights. We noted that in light of *Massachusetts Board of Retirement* v. *Murgia,* 427 U.S. 307 (1976), our inquiry was limited to ascertaining whether the requirement was rationally related to a legitimate state interest. But although we recognized that the requirement had to be assessed according to the relaxed rational basis standard, we reversed the district court's dismissal on the basis of the pleadings:

> It is no answer to say that a state "does not violate the Equal Protection Clause merely because the classification made by its law are imperfect," when these classifications cannot be shown even to be rationally related to the objective the state is attempting to achieve. . . .

569 F.2d at 996 (citation omitted).

The decision in *Murgia,* we noted, was based on an evidentiary record showing how the challenged legislation related to a legitimate state purpose. In the absence of any such factual showing, this court refused in *Gault* to uphold the constitutionality of the state's action.

We hold that some evidentiary inquiry is required to decide whether the challenged sections of this statute have a rational basis.[1] In each of the cases relied on by the district court, the decision that the state action was constitutional was based not on the pleadings but on an evi-

---

[1] Although the plaintiffs' burden is admittedly great, we do not agree with appellees that this a case where the rationality issue can be resolved on the basis of judicial notice.

dentiary record. *Vance* v. *Bradley*, 440 U.S. 93 (1979); *Massachusetts Board of Retirement* v. *Murgia*, 427 U.S. 307 (1976); *Williamson* v. *Lee Optical of Oklahoma, Inc.*, 348 U.S. 483 (1955); *Trafelet* v. *Thompson*, 594 F.2d 623 (7th Cir. 1979).[2]

Circuit Rule 18 shall apply on remand.

REVERSED and REMANDED

---

[2] Although the constitutionality of this statute has been challenged in previous litigation, *see, e.g., Duncan* v. *Ward*, 225 F. Supp. 195 (N.D. Ill. 1963), those adjudications are not binding on this court. In *People* v. *AAA Dental Laboratories*, 8 Ill. 2d 330, 134 N.E.2d 285 (1956), the Illinois Supreme Court upheld the statute as constitutional, reversing in part and affirming in part a decision by the Illinois trial court that it was unconstitutional to prohibit dental technicians from selling dentures directly to the public but constitutional to permit only licensed dentists to take the necessary impressions, give the order or prescription and fit the dentures in the patient's mouth. We would be bound on this question only by a decision of the Supreme Court of United States. However, on appeal to the United States Supreme Court, the case was dismissed "for want of a substantial federal question." 352 U.S. 863. Similarly, in *Cordak* v. *Reuben H. Donnelly Corp.*, 20 Ill. 2d 153, 169 N.E.2d 321 (1960), the constitutionality of a certain advertising restriction in the statute was upheld by the Illinois Supreme Court. The United States Supreme Court also dismissed that appeal for want of a substantial federal question. 365 U.S. 299 (1961).

Those summary adjudications by the United States Supreme Court are decisions on the merits and if the issues there decided are the same as those raised here, they are controlling precedent. *Hicks* v. *Miranda*, 422 U.S. 332, 345 (1975); *Chicago Sheraton Corp.* v. *Zaban*, 593 F.2d 808 (7th Cir. 1979). Summary adjudications by the Supreme Court, however, have less precedential value than an opinion on the merits and "the precedential effect of a summary affirmance can extend no farther than 'the precise issues presented and necessarily decided by those actions.'" *Illinois State Board of Elections* v. *Socialist*

[2] (Continued)

Workers Party, 440 U.S. 173, 182 (1979), quoting *Mandel* v. *Bradley,* 432 U.S. 173, 176 (1977). The rationale of a summary adjudication may not be gleaned from the opinion below. *Mandel* v. *Bradley,* 432 U.S. at 176.

We have examined the jurisdictional statements and pleadings submitted on appeal to the Supreme Court in those cases, and we conclude that the issues on which the Court based its dismissals are not dispositive of the instant case. In *AAA Dental Laboratories, Inc.* v. *Illinois ex rel. Chicago Dental Society,* 352 U.S. 863 (1956), the due process issue was whether the statute was rationally related to its purpose where the right of a dental technician to practice his occupation depended solely on whether he was employed by a dentist, without there being any statutory qualifications for technicians or requirement that a dentist supervise their work. The equal protection issue also concerned the lack of statutory qualifications for dental technicians, allegedly resulting in arbitrary decisions by dentist as to which technicians would be employed.

The due process and equal protection issues before the Court in *Cordak* v. *Reuben H. Donnelly Corp.,* 365 U.S. 299 (1961), involved the Act's restriction of advertising by dental technicians in business and telephone directories to name, address, and telephone number listings. Not disputing the legitimacy of preventing technicians from advertising to the public, appellants argued that the law was irrational because it prevented technicians from advertising important information to dentists as well.

In the instant case the issue is whether due process and equal protection are violated because denturists are prevented from providing denture care and advertising directly to the public. That issue is different from those before the United States Supreme Court in the *AAA Dental Laboratories* and *Cordak* cases and therefore those decisions are not controlling.

Unpublished Per Curiam Order

JUDGMENT—ORAL ARGUMENT

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

December 3, 1980

Before

Hon. THOMAS E. FAIRCHILD, *Chief Judge*
Hon. LUTHER M. SWYGERT, *Circuit Judge*
Hon. ROBERT A. GRANT, *Senior District Judge**

No. 79-1529

HELEN SCHILLER, et al.,

Plaintiffs-Appellants,

vs.

THE ILLINOIS STATE DENTAL SOCIETY, an Illinois not-for-profit corporation, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 78-C-3936
Judge JOHN POWERS CROWLEY

This cause was heard on the record from United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby REVERSED, with costs, and REMANDED, in accordance with the provisions of the order of this court entered this date.

---

* The Honorable Robert A. Grant, Senior District Judge for the Northern District of Indiana, is sitting by designation.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

January 27, 1981

Before

Hon. THOMAS E. FAIRCHILD, *Chief Judge*
Hon. LUTHER M. SWYGERT, *Circuit Judge*
Hon. ROBERT A. GRANT, *Senior Judge**

No. 79-1529

HELEN SCHILLER, et al.,

Plaintiffs-Appellants,

vs.

THE ILLINOIS STATE DENTAL SOCIETY, an Illinois not-for-profit corporation, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 78-C-3936

JOHN POWERS CROWLEY, *Judge.*

On consideration of the petition for rehearing and motion for clarification filed in the above-entitled cause by defendants-appellees, all of the judges on the original panel having voted to deny the same,

IT IS HEREBY ORDERED that the aforesaid petition for rehearing be, and the same is hereby DENIED.

IT IS HEREBY FURTHER ORDERED that the motion for clarification be, and the same is hereby DENIED.

---

* The Honorable Robert A. Grant, Senior Judge from the Northern District of Indiana, is sitting by designation.

In The
UNITED STATES DISTRICT COURT
For The Northern District Of Illinois
Eastern Division

HELEN SCHILLER, WALTER COLEMAN, UPTOWN PEOPLES COMMUNITY SERVICE CENTER, an Illinois not-for-profit corporation; UPTOWN PEOPLES COMMUNITY HEALTH SERVICES BOARD OF DIRECTORS, INC., an Illinois not-for-profit corporation; SAMUEL ABERNATHY and other individuals listed on Exhibit "47" of the Complaint; and GARY HINTON, WALTER DAUSCH, SAM AMENTA, JESSE GAUDARD, DONALD MARTIN, ARTHUR POTTS, NICK DeANGELIS, MARK KUPER, ROBERT SCHMITT, ELMER E. HIGGERSON, CAROLINE BASONY, EDWARD UMBRICHT, THOMAS GAURA, ROBERT KOPFER, IRA JORDAN, ROBERT A. MARTIN, WILLIAM NORRIS, IRVING WEISS, ROBERT YONKEE, HAMAZASB MKRDICHIAN, JOSEPH E. HOCH, JEROME GETSLA, JOSEPH VINCI, EDWARD DAVISSON, ELI SUTKER, WILSON G. SARGEANT, BRUNO ALONZO, GEORGE HARTMANOWSKI, RAY ANDREWS, JOHN BANE, ADELOR GIULIANO, MITCH BRONNER and ANTHONY CARBONE,

Plaintiffs,

vs.

THE ILLINOIS STATE DENTAL SOCIETY, an Illinois not-for-profit corporation, THE CHICAGO DENTAL SOCIETY, an Illinois not-for-profiit corporation; JULIUS W. ULANECK, DR. LOUIS V. FOURIE, DR. FRANK A. SCHROEDER, DR. DOMINIC J. CATRAMBONE, DR. BERT W. GILBERT, DR. GRANT A. MACLEAN, DR. LEWIS L. WEIL, DR. ROBERT H. GRIFFITHS, DR. RAFFAELE SURIANO, DR. JOHN MADONIA, DR. THOMAS QUINN, DR. EDWARD TROUTT, DR. DAVID VALENTINE, DR. THOMAS WALLEN, DR. GEORGE KELLY and DR. RAYMOND. P. KOTZ,

Defendants.

No. 78 C 3936

MEMORANDUM OPINION AND ORDER

JOHN POWERS CROWLEY, *District Judge*

This case involves the constitutionality and legality of the Illinois Dental Practice Act, Ill. Rev. Stat., Ch. 111, §2202, et seq., and the meehods used to enforce that Act.

The plaintiffs are two individual residents and two not-for-profit Uptown community organizations that are either "concerned", "devoted" or have as their "principal purpose" the dental health care needs of the poor of that area,[1] and several hundred individuals whose names are enumerated in Exhibit 47 and who are "present and potential consumers of dentures and denture services." In addition, various denturists[2] are plaintiffs, and the majority of the alleged wrongful acts of defendants pertain solely to this group.

Defendants are the Illinois State Dental Society and the Chicago Dental Society,[3] the Illinois Dental Laboratory Association,[4] and various individual defendants who are 1) all present or former officers of the Illinois State Dental Society; 2) the program director of the Illinois State Dental Society; and 3) presumably various other

---

[1] The organizations are Uptown People's Community Service Center and Uptown People's Community Health Service Board of Directors.

[2] Denturists are allegedly persons who are trained to make, fit and repair dentures.

[3] Both of these organizations are dentists' trade associations.

[4] Plaintiffs have failed to name the Illinois Dental Laboratory Association as a defendant in the caption of the complaint, although that organization is mentioned as a defendant in paragraph 3. The Illinois Dental Laboratory Association has moved to dismiss the cause against it on the ground that plaintiffs have failed to comply with Fed. R. Civ. P. 10(a). In light of the conclusion we reach in this case, it is unnecessary to decide this issue.

dentists whom the complaint depicts merely as residents and citizens of Illinois.

Defendants have moved to dismiss the complaint on a variety of grounds. They challenged this Court's jurisdiction, claiming that plaintiffs have failed to establish a substantial federal question. Defendants also assert that the non-denturist plaintiffs lack standing to bring this action; that the action is barred by the equitable doctrine of unclean hands, the federal anti-injunction statute, 28 U.S.C. §2283, the statute of limitations and the doctrines of res judicata and abstention. In addition, defendants contend that the complaint should be dismissed, because it violates Fed. R. Civ. P. 8.

The complaint, which is hardly the short, concise statement intended by Rule 8, lists not only the purported wrongful acts of these defendants, but also sets forth a comprehensive history of the dental profession and the sociologicial and economic impact of the Illinois statute. This Court, however. is concerned only with the factual allegations relevant to the causes of action set forth and the legal issues that arise from them.

The Illinois Dental Practice Act, Ill. Rev. Stat. Ch. 111, §2202 et seq., is a comprehensive statutory scheme regulating dentistry and various aspects of dental health care in Illinois. The Act prohibits the practice of dentistry without a license.[5] Among acts which constitute the practice of dentistry are taking of impressions, replacing

---

[5] Ill. Rev. Stat. Ch. 111, §2242:

PENALTY FOR UNLAWFUL PRACTICE

Any person who practices or offers to practice dentistry in this State without being licensed for that purpose, or whose license has been suspended or revoked, or who violates any of the provisions of this Act, for which no specific penalty has been provided herein, is guilty of a Class A misdemeanor.

teeth, and making and repairing dental prostheses.[6] However, the Act exempts, from that definition, the extraoral construction or repair of dentures and bridges, or replacement of teeth when those services are requested by a

---

[6] Ill. Rev. Stat., Ch. 111, 2217:

PRACTICE OF DENTISTRY — ACTS CONSTITUTING — PRIMA FACIE EVIDENCE — EXEMPTIONS

A person practices dentistry, within the meaning of this Act:

* * *

(8) Who takes impressions of the human tooth, teeth, or jaws or performs any phase of any operation incident to the replacement of a part of a tooth, a tooth, teeth or associated tissues by means of a filling, crown, a bridge, a denture or other appliance; or

(9) Who furnishes, supplies, constructs, reproduces or repairs, or offers to furnish, supply, construct, reproduce or repair prosthetic dentures (sometimes known as "plates"), bridges or other substitutes for natural teeth, to the user or prospective user thereof;

* * *

The following practices, acts, and operations, however, are exempt from the operation of this Act:

* * *

(f) The performance of any dental service by an appropriately trained dental assistant, if such service is performed under the direction and immediate supervision and full responsibility of a dentist licensed under this Act, provided, however, that such persons shall not be allowed to perform or attempt to perform any of the following services:

* * *

6) Any and all taking of impressions for the fabrication of orthodontic appliances, prosthetic appliances, space maintainers, crowns, bridges, splints, inlays, onlays, or other restorative or replacement dentistry.

licensed dentist[7], and that request is made on a written work order.[8] Soliciting or providing those services with-

---

[7] Ill. Rev. Stat. Ch. 111, §2218:
MANUFACTURE OF DENTURES, BRIDGES OR REPLACEMENTS FOR LICENSED DENTISTS — ADVERTISEMENTS

Licensed dentists may employ or engage the services of any person, firm or corporation to construct or repair, extraorally, prosthetic dentures, bridges, or other replacements for a part of a tooth, a tooth, or teeth. A person, firm or corporation, so employed or engaged, when constructing or repairing such dentures, bridges or replacements, exclusively, directly and solely for licensed members of the dental profession, and not for the public or any part thereof, shall not be deemed or considered to be practicing dentistry as defined in this Act.

[8] Ill. Rev. Stat. Ch. 111, §2219:
MANUFACTURE OF DENTURES, BRIDGES OR REPLACEMENTS FOR LICENSED DENTISTS — WORK ORDER — SUB-WORK ORDER — PENALTIES

(1) Any licensed dentist who employs or engages the services of any person, firm or corporation to construct or repair, extraorally, prosthetic dentures, bridges, or other replacements for a part of a tooth, a tooth, or teeth, shall furnish such person, firm or corporation with a written work order on forms prescribed by the Department of Registration and Education which shall contain: (a) the name and address of the person, firm or corporation to which the work order is directed. (b) The patient's name or identification number. If a number is used, the patient's name shall be written upon the duplicate copy of the work order retained by the dentist. (c) The date on which the work order was written. (d) A description of the work to be done, including diagrams if necessary. (e) A specification of the type and quality of materials to be used. (f) The signature of the dentist and the number of his license to practice dentistry.

out first supplying or obtaining a written work order constitutes a misdemeanor.[9] In addition, the Act prohibits

---

[8] (Continued)

(2) The person, firm or corporation receiving a work order from a licensed dentist shall retain the original work order and the dentist shall retain a duplicate copy thereof for inspection at any reasonable time by the Department of Registration and Education or its duly authorized agents, for a period of 3 years in both cases.

(3) If the person, firm or corporation receiving a written work order from a licensed dentist engages another person, firm or corporation (hereinafter referred to as "sub-contractor") to perform some of the services relative to such work order, he or it shall furnish a written sub-work order with respect thereto on forms prescribed by the Department of Registration and Education which shall contain: (a) The name and address of the sub-contractor. (b) A number identifying the sub-work order with the original work order, which number shall be endorsed on the work order received from the licensed dentist. (c) The date on which the sub-work order was written. (d) A description of the work to be done by the sub-contractor, including diagrams if necessary. (e) A specification of the type and quality of materials to be used. (f) The signature of the person, firm or corporation issuing the sub-work order. The sub-contractor shall retain the sub-work order and the issuer thereof shall retain a duplicate copy, attached to the work order received from the licensed dentist, for inspection by the Department of Registration and Education or its duly authorized agents, for a period of 3 years in both cases.

[9] Ill. Rev. Stat. Ch. 111, §2219:

(4) Any licensed dentist who: (a) employs or engages the services of any person, firm or corporation to construct or repair, extraorally, prosthetic dentures, bridges, or other dental appliances without first providing such person, firm, or corporation with a written work order; or (b) fails to retain a duplicate copy

public advertisement of the products or services of firms performing extraoral work for licensed dentists.[10]

---

[9] (Continued)

of the work order for 3 years; or (c) refuses to allow the Department of Registration and Education or its duly authorized agents, to inspect his files of work orders, is guilty of a Class A misdemeanor and the Department of Registration and Education may revoke or suspend his license therefor.

(5) Any such person, firm or corporation, who: (a) furnishes such services to any licensed dentist without first obtaining a written work order therefor from such dentist; or (b) acting as a sub-contractor as described in (3) above, furnishes such services to any person, firm or corporation, without first obtaining a written sub-work order from such person, firm or corporation; or (c) fails to retain the original work order or sub-work order, as the case may be, for 3 years; or (d) refuses to allow the Department of Registration and Education or its duly authorized agents, to inspect his or its files or work orders or sub-work orders, is guilty of a Class A misdemeanor.

[10] Ill. Rev. Stat. Ch. 111, §2218:

However, it is unlawful for persons, firms or corporations so employed or engaged [rendering services under licensed dentist work order], to advertise in any manner the appliances constructed or repaired, or the services rendered in the construction, repair or alteration thereof, except, that persons, firms or corporations so employed may announce in trade journals and professional publications which circulate among members of the dental profession, their names, the locations or places of their business, their office hours, telephone numbers, and the fact that they are engaged in the construction, reproduction or repair of such appliances, together with such display advertisements as disclose the character and application of their work, and persons, firms or corporation so employed or engaged may furnish to licensed dentists information regarding their products, materials, uses and prices therefor. Announcement may also be made by business card, in business and telephone direc-

The complaint is filled with facts and statistics about the need for low cost dental health care. In essence, those claims are that persons in need of dentures are concentrated among the poor and elderly, and that the inflated prices charged by dentists place the cost of dental health care beyond their means. The complaint avers that a large majority of dentists do not construct dentures for their patients; they send orders to dental technicians who are trained to make and fit dentures. Plaintiffs assert that denturism is a profession independent of dentistry; that as uniquely trained professionals, denturists are capable of directly rendering their services to the public without endangering the public health, and with the effect of providing services comparable to those given by dentists at a fraction of the cost.

Generally, the complaint is divided among allegations relating to the denturist plaintiffs and the consumer plaintiffs and antitrust and constitutional violations. The antitrust allegations pertaining to the denturist plaintiffs are that the defendants exercise a monopoly over, and thus, are able to charge monopoly prices for, dentures and the services required for fitting dentures in

---

[10] (Continued)

tories, and by signs located upon the premises wherein the place of business is situated, but announcements made by business card or in business and telephone directories and signs shall not contain any amount as a price or fee for the services rendered, or to be rendered, or for any material or materials used or to be used, or any picture or other reproduction of a human head, mouth, denture or specimen of dental work or any other media calling attention of the public to their business. Announcements in business and telephone directories shall be limited to name, address and telephone number, and shall not occupy more than the number of lines necessary to disclose such information. The lettering on signs shall be no more than 7 inches in height and no illuminated or glaring light signs shall be used.

violation of §2 of the Sherman Act,[11] and that defendants have entered into a contract, combination and conspiracy in restraint of trade.[12]

The constitutional challenges are that the Illinois Dental Practice Act violates denturists' equal protection and due process rights because it prevents them from practicing their profession directly with the public; that the statute violates their rights to be free from involuntary servitude as guaranteed by the thirteenth amendment as their ability to engage in their profession is subrogated to control by dentists; that the Act infringes on denturists' First Amendment right to disseminate useful commercial information about their products and services; that this infringement of their constitutional rights in turn causes a violation of their equal protection and due process rights; that defendants have entered into a conspiracy to deprive denturists of equal protection and privileges under the laws and their First Amendment rights to speak and petition the legislature in violation of 42 U.S.C. §1985(3). Plaintiffs also charge defendants with violation of their right to equal privileges and immunities under the law. 42 U.S.C. §1983.[13]

In addition, the complaint avers that defendants have engaged in acts that constitute unlawful business practices, unlawful competition and interference with contractual relationships contrary to Illinois law.

---

[11] 15 U.S.C. §2.

[12] 15 U.S.C. §1.

[13] Count VII of the complaint purports to state a claim under 42 U.S.C. §1983(3). The allegations, however, state that defendants have entered into a conspiracy to deprive plaintiffs of equal privileges and immunities under the laws. Section 1983 does not contain any subsections, nor does that statute provide a cause of action for conspiracy. Thus, it is impossible to determine on which civil rights statute the claim is based.

Only Counts XII and XIII pertain to the consumer plaintiffs, the Uptown organizations and concerned residents. Essentially they charge defendants with violation of the federal anti-trust laws, alleging that consumers are forced to pay monopolistic prices for dentures and dental services.

As one of the grounds presented in defendants' motion to dismiss is a challenge to this Court's jurisdiction, and this contention bears on the inherent power of the court to entertain the controversy, it is imperative to resolve this issue.

It is undisputed that diversity of citizenship is not an alternate basis for jurisdiction in this case since all parties are citizens of Illinois. Plaintiffs claim that our jurisdiction is founded on various federal statutes and the doctrine of pendant and ancillary jurisdiction. Defendants answer that since all of plaintiffs' claims are without merit, there is no substantial federal question and therefore, the cause should be dismissed.

The authority to hear claims arising under various federal statutes and the Constitution presupposes that those claims be of a substantial nature. Thus, although "[t]he test for dismissal is a rigorous one and if there is any foundation of plausibility to the claim federal jurisdiction exists," 13 Wright & Miller, Fed. Prac. & Proc. §3564, at 428, if the claim is frivolous and wholly without merit, *Southpark Square Ltd. v. City of Jackson*, 565 F. 2d 338 (5th Cir., 1977), *cert. denied*, ... U.S. ....., 98 S. Ct. 2849 (1978), or if prior decisions of the Supreme Court clearly foreclose the federal claim, *McLucas v. DeChamplain*, 421 U.S. 21 (1975) the Court lacks subject matter jurisdiction.

The Antitrust Allegations

Defendants argue that plaintiffs are barred from bringing any action under the antitrust laws since the regulation of denturists in the form of the Act falls within the perimeters of the state action exception to the federal

antitrust laws. Plaintiffs have failed to support their position regarding the sufficiency of their complaint in light of the state action exemption. However, that doctrine should not be applied in a mechanical fashion, *Kurek* v. *Pleasure Driveway & Park District*, 557 F. 2d 580, 589 (7th Cir., 1977), *vacated on other grounds*, 437 U.S. 992 (1978), and the allegations must be examined against the breadth of the exemption.

In *Parker* v. *Brown*, 317 U.S. 341, 352 (1943), the Supreme Court held that the Sherman Act did not apply to a state's anticompetitive regulation when the state imposed such regulations "as an act of government." Since that decision the Court has had occasion to refine the holding in *Parker*. *See City of Lafayette, Louisiana* v. *Louisiana Power & Light Company*, 435 U.S. 398 (1978), *Cantor* v. *Detroit Edison Company*, 428 U.S. 579 (1975); *Goldbarb* v. *Virginia State Bar*, 421 U.S. 773 (1975). While the result of those decisions has been to narrow the scope of the exemption, it is clear that when a state attempts to regulate a profession, in exercise of its police power, those acts are not susceptible to attack under federal antitrust statutes. *Bates* v. *State Bar of Arizona*, 433 U.S. 350, 362, n. 16 (1977).

Accordingly, the task here is to determine whether the Illinois Act and its enforcement by defendants is an action by the state acting as sovereign and thus immune from federal antitrust restrictions.

In *Bates* v. *State Bar of Arizona*, 433 U.S. 350 (1977), the Supreme Court held that plaintiff's claims under the Sherman Act were barred since the Arizona attorney disciplinary rule in question fell within the *Parker* v. *Brown* exemption. The *Bates* decision provides several significant factors that aid in the determination of the question here. In order that the exemption be applicable it must be determined 1) whether the regulation is truly the action of the State; 2) whether the plaintiffs' claims are ultimately directed at the State; and 3) whether the regulation furthers some policy by the State in order to avoid

unnecessary and inappropriate subordination of the federal policy underlying the antitrust laws.

The Illinois Dental Practice Act is a statute enacted by the Illinois legislature. As such, it is a direct and affirmative command by the State concerning a vital aspect of the health and safety of its citizens. There is no question that in enacting the legislation the State was acting as sovereign.

It does not apear that plaintiffs take issue with this finding. However, they claim that in attempting to enforce the Act defendants are acting for their private interests and that it is this activity that runs contrary to antitrust prohibitions. Whatever defendants' motivations in seeking enforcement are, it is clear that plaintiffs' claims are really directed at the State.

The Illinois Act permits the Attorney General, the State's Attorney, or "any resident citizen" to bring suit against any person from unlawfully practicing dentistry. Ill. Rev. Stat. Ch. III §2244. As Illinois residents, defendants, whether they be Illinois corporations or individual citizens, are empowered to uphold the statute's provisions. In so doing, they are acting in a sense not as individual citizens, but as vindicators of the public policy embodied in the Act. Consequently, even though the statutes prohibitions buttress defendants' pecuniary or professional interests, plaintiffs' claims against them are actually directed against the State of Illinois. The fact that the statutory scheme may sanction some private restraint on trade is not sufficient to remove the legislation from the exemption. *See New Motor Vehicle Board of California* v. *Orrin W. Fox Company,* 47 U.S.L.W. 4017 (Dec. 5, 1978).

There is further support for this conclusion in *Bates* v. *State Bar of Arizona,* 433 U.S. 350 (1977). In that case, although the State Bar of Arizona was named as defendant, the Court found that the Arizona Supreme Court was "the real party in interest," 433 U.S. at 361, as it was the latter body that had adopted the disciplinary

rule and was charged with its enforcement. Similarly, in this case, the Illinois legislature is responsible for the enactment of the statute in question. As the Arizona Supreme Court delegated some enforcement authority to the State Bar, the Illinois Legislature depends on both public officials and private citizens to aid in the enforcement of the Illinois Dental Practice Act. Accordingly, plaintiffs' claims are ultimately directed at the State of Illinois.

The health and welfare of its citizens is of primary concern to a State. Indeed, the express purpose of the act is to permit only qualified persons to practice dentistry in order to promote the public safety and welfare. Ill. Rev. Stat., Ch. 111 §2202. Like the rule involved in *Bates*, the legislation can be continuously reviewed and amended as the legislature sees fit. Thus, "[o]ur concern that federal policy is being unnecessarily and inappropriately subordinated to state policy is reduced in such a situation." *Bates* v. *State Bar of Arizona*, 433 U.S. 350, 362 (1977).

The Dental Practice Act is precisely the type of legislation that the Supreme Court contemplated in carving out a state action exemption to the federal antitrust laws. It is a regulation designed to protect some general public good or state interest. *New Motor Vehicle Board of California* v. *Orrin W. Fox Company*, 47 U.S.L.W. 4017 (Dec. 5, 1978); *Parker* v. *Brown*, 317 U.S. 341 (1943). Moreover, federal interference is particularly disfavored when the profession is one that has been traditionally regulated by the state.[14]

---

[14] *Bates* v. *State Bar of Arizona*, 433 U.S. 350, 362 & n. 16 (1976).

Indeed, our decision today on the Sherman Act issue was presaged in *Virginia Pharmacy Board* v. *Virginia Consumer Council*, 425 U.S. 738, 770 (1976). We noted there: "Virginia is free to require whatever professional standards it wishes of its pharmacists; it may subsidize them or protect them from competition in other ways. Cf. *Parker* v. *Brown*, 317 U.S. 341 (1943)."

The conclusion that the Act falls within the state action exemption to the federal antitrust laws also forecloses plaintiff denturists' cause of action under §1 of the Sherman Act, 15 U.S.C. §1. Plaintiffs' claims that defendants threatened boycotts, retaliation and otherwise interfered with contracts and business relationships of dental laboratories that dealth with plaintiffs amount to no more than attempts to enforce the Act. Similarly, the allegations pertaining to the numerous civil and criminal actions brought against plaintiff denturists are without merit; such activity is specifically authorized. Ill. Rev. Stat. Ch. 111, §2244. In addition, plaintiffs' assertions that they have been deprived of their right to petition the legislature is beyond the reach of the Sherman Act. *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961).

Therefore, because the Dental Practice Act and efforts to enforce it fall outside both the Sherman and Clayton Acts, plaintiffs have failed to show that their claims are meritorious since they are precluded by prior Supreme Court decisions. *McLucas* v. *DeChamplain*, 421 U.S. 21 (1975). Consequently, plaintiffs may not invoke this Court's jurisdiction under those statutes.

Equal Protection and Due Process Claims

The allegations of the complaint that refer to a violation of the equal protection and due process rights of plaintiff denturists are based on the initial premise that denturism is a separate and independent profession. Plaintiff denturists claim that allowing them to practice their profession by directly dealing with the public would not endanger the health, safety and welfare of Illinois citizens. Therefore, the argument continues, because the Illinois Dental Practice Act subrogates denturists' ability to practice their profession to the control of dentists, the Act exceeds the constitutional limits of the state's police power.

Plaintiffs are correct in that the grant of authority contained in the Tenth Amendment is limited by the equal protection and due process clauses of the Fourteenth

Amendment. However it is clear that "[t]he day is gone when [a] Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought." *Williamson* v. *Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 488 (1955). Similarly in the context of equal protection, unless a statute unnecessarily affects a suspect class or impinges on a fundamental right, a showing that the statute is rationally related to the legislative objective is sufficient to pass constitutional muster. *See Vance* v. *Bradley*, 47 U.S.L.W. 4176, 4177 (Feb. 22, 1979); *Massachusetts Bd. of Retirement* v. *Murgia*, 427 U.S. 307 (1976); *San Antonio Independent School District* v. *Williams*, 411 U.S. 1 (1973).

Plaintiff denturists do not, nor could they refute that standard. Rather, they argue that the right to practice one's profession is a fundamental right. Consequently, they contend that the compelling state interest rather than merely the rational relationship test is the appropriate standard.

We cannot agree that there is a fundamental right to practice a profession free of any legislative prohibitions. It is now firmly established in due process and equal protection jurisprudence that the fundamental nature of a right does not depend on "comparisons of [its] relative societal significance," but rather whether it is "explicitly or implicitly guaranteed by the Constitution." *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1, 33-34 (1973).

Plaintiffs have cited innumerable cases to support their theory that this case involves a fundamental right entitled to strict judicial scrutiny. To the extent that those decisions, e.g., *People* v. *Weiner*, 271 Ill. 74, 110 N.E. 870 (1975), emerge from an era in which courts customarily replaced the legislature's judgment with their own, they are obsolete. *Williamson* v. *Lee Optical of Oklahoma, Inc.*, 348 U.S. 483 (1955); *Lasdon* v. *Hallahan*, 377 Ill. 187, 36 N.E. 2d 227 (1941). To the extent that they deal with rights that have been deemed fundamental, e.g., *Sherbert*

v. *Verner*, 374 U.S. 398 (1963) (religion); *Shapiro* v. *Thompson*, 394 U.S. 618 (1969) (interstate travel); *Eisenstadt* v. *Baird*, 405 U.S. 438 (1972) (privacy), they are inapposite.

We believe that our determination as to whether a fundamental right is present here is controlled by *Massachusetts Board of Retirement* v. *Murgia*, 427 U.S. 307 (1976). In that case the Supreme Court held mandatory retirement at age 50 did not violate a state police officer's equal protection rights, noting:

> This Court's decisions give no support to the proposition that a right of governmental employment *per se* is fundamental. [citations omitted]. Accordingly, we have expressly stated that a standard less than strict scrutiny "has consistently been applied to state legislation restricting the availability of employment opportunities." *Massachusetts Board of Retirement* v. *Murgia*, 427 U.S. 307, 313 (1976), *quoting*, *Dandridge* v. *Williams*, 397 U.S. 471, 485 (1970).

The fact that *Murgia* involved public employment rather than the pursuit of a private profession does not detract from the conclusion that plaintiff denturists do not have a fundamental right to practice their profession free of any reasonable restraints. Indeed, in light of the fact that in certain instances public employment gives rise to greater Constitutional guarantees, *cf. Perry* v. *Sindermann*, 408 U.S. 593 (1972), that aspect of *Murgia* buttresses the determination here. Thus, since plaintiff denturists do not have a fundamental right to practice their profession, all that is required is that the provisions of the Illinois Dental Practice Act be rationally related to its purpose.

In this regard plaintiff denturists argue that the Court should not imagine statutory objectives. They claim that in the very least they are entitled to a hearing which would require the state to articulate the wrongs at which the Act is aimed, and affirmatively establish that its terms bear a rational relation to those ends.

A court should not fabricate legislative designs. However, once the statute's objective is articulated, unless the means chosen are wholly irrational, the legislature is given a very wide latitude in fashioning ways to combat the problem at which the statute is directed.

Recently, the Supreme Court has instructed that "*those challenging the legislative judgment* must convince the court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker." *Vance* v. *Bradley*, 47 U.S.L.W. 4176, 4181 (Feb. 22, 1979) (emphasis supplied). Plaintiffs have submitted an overwhelming amount of data supposedly in an attempt to show that there is no factual basis justifying the Act's treatment of denturists.

The plainiffs have misconstrued the scope of review. Rather than examining all viable alternatives and rendering a decision on our evaluataion of the wiser approach, the review must focus solely on the alternative chosen by the legislature and to determine whether there is any rational basis for that choice.

The express purpose of the Dental Practice Act is to protect the public health and welfare. In addition, the Act purports to further public trust in the dental professions and to ensure that only qualified persons practice dentistry in Illinois.[15]

---

[15] Ill. Rev. Stat. Ch. 111, §2202:

LEGISLATIVE DECLARATION—LIBERAL CONSTRUCTION

The practice of dentistry in the State of Illinois is hereby declared to affect the public health, safety and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the dental profession merit and receive the confidence of the public and that only qualified persons be permitted to practice dentistry in the State of Illinois. This Act shall be liberally construed to carry out these objects and purposes.

The means selected to achieve those ends are to require that any services rendered directly to a patient be performed by a licensed dentist. The legislature has devised standards to insure that those persons licensed have received adequate education and training to perform those functions. Ill. Rev. Stat. Ch. 111, §2206.

The legislature could have concluded that since the dentist is charged with the overall dental health care of his patients, he is best qualified to prescribe the most beneficial type of oral prosthesis. The legislature may have decided that the training required of dentists makes them most capable to take impressions, ensure that the necessary extraoral work is done in compliance with the dentist's professional standards and guarantee that the dental fixtures fit properly.

In addition, the Illinois legislature could have found that trust in the dental profession would be promoted only if all work was performed or, in the least, supervised by the dentist, making the dentist ultimately responsible for the adequacy of the services. Many licensing requirements are enumerated in the Act. Ill. Rev. Stat. Ch. 111, §2206. The legislature might have feared that by permitting non-licensed dental technicians to render direct services to the public, some technicians might have attempted to perform functions which only licensed dentists are qualified to discharge. Moreover, the legislature may have considered that such unlawful activities would be more difficult to police were dental technicians permitted to treat patients independently. That the legislature might have more effectively accomplished its purposes by using less restrictive means is simply immaterial.

Plaintiffs' argument that some dental health care services do not require supervision of a licensed dentist and that denturists are qualified to perform some services which the statute delegates solely to dentists is merely another way of saying that the statute is both over- and under-inclusive. It is elementary that when the standard is the rational relationship test imperfect rationally is not

constitutionally fatal. *Vance* v. *Bradley*, 47 U.S.L.W. 4176, 4180 (Feb. 22, 1979); *Massachusets Board of Retirement* v. *Murgia*, 427 U.S. 307, 316 (1975), *quoting*, *Dandridge* v. *Williams*, 397 U.S. 471, 485 (1970); *Williamson* v. *Lee Optical of Oklaahoma, Inc.*, 348 U.S. 483, 487-88 (1955); *Trafelet* v. *Thompson*, No. 78-1941, slip. Op. at 8 (7th Cir., March 16, 1979).

There is nothing presented in the complaint that could establish that the state was acting beyond the limits of its police power. The abundant information concerning the laws in Canada and other states that permit denturists to render their services directly to the public, while interesting, is not sufficient to alter the conclusion that plaintiffs' claims under the due process and equal protection clause are unmeritorious. It merely reinforces the determination that state legislatures are better equipped to make judgments about controversial matters affecting the health and welfare of their constituents.[16]

---

[16] This case does not present the first challenge to the Illinois Act. *See Duncan* v. *Ward*, 225 F. Supp. 195 (N.D. Ill., 1963); *People ex rel. Chicago Dental Society* v. *A.A.A. Dental Laboratories, Inc.*, 8 Ill. 2d 330, 134 N.E. 2d 285 (1956); *Lasdon* v. *Hallihan*, 377 Ill. 187, 36 N.E. 2d 227 (1941); *People ex rel. Watson* v. *Spinka*, 58 Ill. App. 3d 729, 374 N.E. 2d 787 (1978); *People ex rel. Illinois Dental Society* v. *Vinci*, 35 Ill. App. 3d 474, 342 N.E. 2d 206 (1976).

In each of those cases the Illinois Dental Practice Act was alleged to violate denturists' equal protection and due process rights. Although Federal Courts are not bound by Illinois Courts' decisions on the United States Constitution, the rationale of these opinions further demonstrates that there is no basis for a claim that the legislative means are not rationally related to the statute's purpose.

In *People ex rel. Chicaago Dental Society* v. *A.A.A. Dental Laboratories, Inc.* 8 Ill. 2d 330, 333-35, 134 N.E. 2d 285, 288-89 (1956), the Illinois Supreme Court, addressing arguments similar to those presented here, stated:

Vance v. *Bradley*, 47 U.S.L.W. 4177, 4181 (Feb. 22, 1979); *Trafelet* v. *Thompson*, No. 78-1941, slip. op. at 7 (7th Cir., March 16, 1979).

First Amendment Claim

Plaintiff denturists challenge the Illinois Dental Practice Act, Ill. Rev. Stat. Ch. 111, §2218, on the ground that, by prohibiting public advertising about denturists' products and services, it infringes on their right of free speech. Extended discussion of this issue is unnecessary since this claim is clearly without merit.

While commercial speech has been afforded some First Amendment protection, *Bates* v. *State Bar of Arizona*,

---

[16] (Continued)

> The aim of the statute is to restrict the practice of dentistry to licensed dentists with the exception that extra-oral work on dental appliances may be done by non-dentists who are employed, or employed by dentists who are to do it. To that end, dental technicians are prohibited to do work on dental appliances directly for the public. The evidence establishes that the knowledge and skill of the dentist is necessary in the diagnosis of the case, the taking of impressions, the issuance of instructions of a prosthetic denture.
>
> In our opinion the power of the legislature is not exhausted when it has provided that there shall be professional supervision at the inception and the conclusion of what is essentially a single process. It may, if it sees fit, go further and insure that responsibility to the patient shall not be fragmented, and it may focus that responsibility upon a member of the profession which it regulates. By that means, compliance with the requirement that the dentist shall fit the appliance in place and make the necessary adjustments may be enhanced, protection against inferior workmanship and materials and exorbitant prices may be ensured, and the dentist can be certain that the work for his patients is done by those in whose integrity, competence and skill he has confidence.

433 U.S. 350 (1977); *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976), the Supreme Court has explicitly stated that First Amendment guarantees are not applicable when the underlying activity which is the subject of the advertisement is illegal. *Bates v. State Bar of Arizona*, 433 U.S. 350, 384, (1977). *See also Pittsburg Press Company v. Pittsburg Commission on Human Relations*, 413 U.S. 376 (1973).

Under the Illinois Act plaintiff denturists are not free to perform their services directly on patients. In fact, should they fail to obtain a written work order issued by a licensed dentist they are subject to criminal charges for a misdemeanor. Ill. Rev. Stat. Ch. 111, §2219. Plaintiff denturists do not claim that they are barred from publishing articles about the usefulness and benefits of their profession in newspapers, magazines and professional journals. Indeed, the exhibits attached to their complaint indicate that a plethora of articles has emerged on that subject. Their sole contention is that they are restricted from advertising services that the Act explicitly forbids them from performing. First Amendment protection of commercial simply does not extend that far, and therefore plaintiffs' assertion that they have been denied their right to free speech must fail.

Thirteenth Amendment Claim.

Plaintiff deturists' claims that the Illinois Act deprives them of their right under the thirteenth amendment to be free from involuntary servitude are frivolous. To establish a violation of the thirteenth amendment, a showing of compulsion is necessary. *Flood v. Kuhn*, 316 F. Supp. 271, 281 (S.D.N.Y., 1970), *aff'd*, 443 F. 2d 264 (2nd Cir., 1971).

Plaintiffs have made no allegation that they are compelled to practice denturism; they are free to engage in any other profession. Also the fact that their work is subjected to the control and scrutiny of a licensed dentist

is insufficient to establish that they are unwillingly bound to pursue a particular livelihood. All that is necessary to enable denturists to perform their services directly on their patients is to complete the education and training required by he statute.[17] Therefore, there is absolutely no plausibility to plaintiffs' thirteenth amendment allegations, and consequently, no basis upon which to invoke this Court's jurisdiction.

Other Constitutional Clims

Plaintiffs purport to state claims for violation of 42 U.S.C. §§1983 and 1985(3). To support their cause of action under §1983, plaintiffs claim that defendants have continuously initiated civil and criminal actions against them knowing the statute to be unconstitutional. These allegations are spurious.

The Dental Practice Act expressly authorizes actions against persons who practice dentistry without a license. Ill. Rev. Stat. Ch. 111, §2244. Although plaintiffs allege that the suits were knowingly brought in bad faith, there is no support in fact for their position. Indeed, numerous decisions have upheld the constitutionality of the Act. *People ex rel. Chicago Dental Society* v. *A.A.A. Dental Laboratories, Inc.*, 8 Ill. 330, 134 N.E. 2d 285 (1956); *Lasdon* v. *Hallihan*, 377 Ill. 187, 36 N.E. 2d 227 (1941); *People ex rel. Watson* v. *Spinka*, 58 Ill. App. 3d 729, 374

[17] Plaintiffs have alleged that two defendants, Suriano and Madonia, have pressured and coerced educators not to provide dental training for plaintiffs. While this type of conduct cannot be sanctioned by the Court, we think that the prohibitions of the thirteenth amendment do not extend to those acts of defendants. *See, Flood* v. *Kuhn*, 316 F. Supp. 271 (S.D.N.Y., 1970), *aff'd*, 443 F. 2d 264 (2d Cir., 1971) (requirement that baseball player play only for a particular team or not at all does not violate thirteenth amendment rights since he is free to pursue another livelihood).

N.E. 2d 787 (1978); *People ex rel. Illinois Dental Society* v. *Vinci*, 35 Ill. App. 3d 474, 342 N.E. 2d 206 (1976). One would be hard pressed to imagine a situation in which the validity of a statute was more clearly defined and accordingly, there is no merit to plaintiffs' assertion that by bringing lawsuits to enforce a valid statute, defendants have infringed their constitutional rights.

With regard to the §1985(3) claim, the complaint avers that defendants and others have conspired to "harass" laboratory technicians and denturists who profess to be able to safely render their services directly to the public as well as those who have attempted to influence and inform the legislature about defendants' practices. These acts, plaintiffs claim, constitute a violation of their right to free speech and to petition the legislature.

Insofar as the conspiracy to deprive plaintiffs of their right of free speech, their claims are unmeritorious. A similar conclusion concerning the conspiracy to deprive plaintiffs of their right to petition the legislature is compelled.

The complaint contains no facts pertaining to specific tactics used by defendants to bar plaintiffs from obtaining the legislature's attention. Nevertheless, we can infer, from other portions of the complaint, that defendants' lobbying techniques have been more effective. These inferences, however, absent some articulated instances of unlawful conduct, do not establish a violation of §1985(3).

After a careful review of each claim of the complaint,[18] the Court is unable to find a tenable claim for violation of the Constitution or any law of the United States. Accordingly, because no substantial federal question has

---

[18] Plaintiffs have also alleged violations under Illinois law. Having found that there is no federal question jurisdiction, and this being the initial stages of the lawsuit, we decline to exercise pendant jurisdiction over the state law claims.

been presented, this Court is without jurisdiction to entertain this action. The motion to dismiss is granted.

/s/ John Powers Crowley
John Powers Crowley
United States District Judge

Dated: April 6, 1979.

COUNSEL OF RECORD

FOSS, SCHUMAN & DRAKE

Sheldon Gardner, George C. Pontikes, Richard S. Kuhlman
11 South LaSalle Street
Chicago, Illinois 60603

Attorneys for Plaintiffs

PETERSON, ROSS, SCHLOERB & SEIDEL
Russell M. Pelton, Pat Chapin
Suite 7300
200 East Randolph Drive
Chicago, Illinois 60601

Attorneys for Illinois State Dental Society, Chicago Dental Society and Individual Defendants

MAX J. SATIN
One North LaSalle Street
Room 1015
Chicago, Illinois 60602
Attorney for Defendant, Illinois Dental Laboratory Association

In The

UNITED STATES DISTRICT COURT

For The Northern District Of Illinois

Eastern Division

HELEN SCHILLER, WALTER COLEMAN, UPTOWN PEOPLES COMMUNITY SERVICE CENTER, an Illinois not-for-profit corporation; UPTOWN PEOPLES COMMUNITY HEALTH SERVICES BOARD OF DIRECTORS, INC., an Illinois not-for-profit corporation; SAMUEL ABERNATHY and other individuals listed on Exhibit "47" of the Complaint; and GARY HINTON, WALTER DAUSCH, SAM AMENTA, JESSE GAUDARD, DONALD MARTIN, ARTHUR POTTS, NICK DeANGELIS, MARK KUPER, ROBERT SCHMITT, ELMER E. HIGGERSON, CAROLINE BASONY, EDWARD UMBRICHT, THOMAS GAURA, ROBERT KOPFER, IRA JORDAN, ROBERT A. MARTIN, WILLIAM NORRIS, IRVING WEISS, ROBERT YONKEE, HAMAZASB MKRDICHIAN, JOSEPH E. HOCH, JEROME GETSLA, JOSEPH VINCI, EDWARD DAVISSON, ELI SUTKER, WILSON G. SARGEANT, BRUNO ALONZO, GEORGE HARTMANOWSKI, RAY ANDREWS, JOHN BANE, ADELOR GIULIANO, MITCH BRONNER and ANTHONY CARBONE,

Plaintiffs,

vs.

THE ILLINOIS STATE DENTAL SOCIETY, an Illinois not-for-profit corporation, THE CHICAGO DENTAL SOCIETY, an Illinois not-for-profit corporation; JULIUS W. ULANECK, DR. LOUIS V. FOURIE, DR. FRANK A. SCHROEDER, DR. DOMINIC J. CATRAMBONE, DR. BERT W. GILBERT, DR. GRANT A. MACLEAN, DR. LEWIS L. WEIL, DR. ROBERT H. GRIFFITHS, DR. RAFFAELE SURIANO, DR. JOHN MADONIA, DR. THOMAS QUINN, DR. EDWARD TROUTT, DR. DAVID VALENTINE, DR. THOMAS WALLEN, DR. GEORGE KELLY and DR. RAYMOND P. KOTZ,

Defendants.

No. 78 C 3936

JUDGMENT ORDER

John Powers Crowley, District Judge

In accordance with the memorandum opinion and order entered in this cause, judgment is entered in favor of the defendants, The Illinois State Dental Society, an Illinois not-for-profit corporation, The Chicago Dental Society, an Illinois not-for-profit corporation; Julius W. Ulaneck, Dr. Louis V. Fourie, Dr. Frank A. Schroeder, Dr. Dominic J. Catrambone, Dr. Bert W. Gilbert, Dr. Grant A. Maclean, Dr. Lewis L. Weil, Dr. Robert H. Griffiths, Dr. Raffaele Suriano, Dr. John Madonia, Dr. Thomas Quinn, Dr. Edward Troutt, Dr. David Valentine, Dr. Thomas Wallen, Dr. George Kelly and Dr. Raymond P. Kotz, and against the plaintiffs, Helen Schiller, Walter Coleman, Uptown Peoples Community Service Center, an Illinois not-for-profit corporation; Uptown Peoples Community Health Services Board of Directors, Inc., an Illinois not-for-profit corporation; Samuel Abernathy and other individuals listed on Exhibit "47" of the Complaint; and Gary Hinton, Walter Dausch, Sam Amenta, Jesse Gaudard, Donald Martin, Arthur Potts, Nick DeAngelis, Mark Kuper, Robert Schmitt, Elmer E. Higgerson, Caroline Basony, Edward Umbricht, Thomas Gaura, Robert Kopfer, Ira Jordan, Robert A. Martin, William Norris, Irving Weiss, Robert Yonkee, Hamazasb Mkrdichian, Joseph E. Hoch, Jerome Getsla, Joseph Vinci, Edward Davisson, Eli Sutker, Wilson G. Sargeant, Bruno Alonzo, George Hartmanowski, Ray Andrews, John Bane, Adelor Giuliano, Mitch Bronner and Anthony Carbone.

/s/ John Powers Crowley
John Powers Crowley
United States District Judge

Dated: April 6, 1979.

ILLINOIS REVISED STATUTES
CHAPTER 111 - PROFESSIONS AND OCCUPATIONS
Conversion Table From Chapter 91
(Illinois Dental Practice Act)

Ill.Rev.Stat. 1975 Ch. 91 Sec.	Ill.Rev.Stat. 1977 Ch. 111 Sec.
56a	2202
57	2203
57a	2204
57b	2205
58	2206
58a	2207
58b	2208
58c	2209
58d	2210
59	2211
59.1	2212
59a	2213
59b	2214
59c	2215
59d	2216
60	2217
60a	2218
60b	2219
60c	2220
61	2221
62	2222
62.1	2223
62.2	2224
62a	2225
62b	2226
62c	2227
62d	2228
62e	2229
62f	2230
62g	2231
62h	2232
62i	2233
63	2234
64	2235
65	2236
66	2237
67	2238
68	2239
69	2240
69a	2241
70	2242
71	2243
71a	2244
71b	2245
72	2246
72a	2247
72b	2248
72c	2249
72d	2250
72e	2251
72f	2252
72g	2253
72h	2254
72i	2255

§ 2202. Legislative declaration—Liberal construction

The practice of dentistry in the State of Illinois is hereby declared to affect the public health, safety and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the dental profession merit and receive the confidence of the public and that only qualified persons be permitted to practice dentistry in the State of Illinois. This Act shall be liberally construed to carry out these objects and purposes.

Laws 1909, p. 277, § 1a, added by Laws 1945, p. 977, § 1, eff. May 24, 1945.

§ 2206. Necessity of license—Application—Fee—Eligibility—Examination

No person, unless previously registered or licensed to practice dentistry in this State at the time this Act shall become operative, shall begin the practice of dentistry or dentistry or dental surgery, or any branches thereof, without first applying for an obtaining a license for such purpose from the Department of Registration and Education, hereinafter referred to as the "department." Application shall be made to the department in writing, and shall, in every instance, be accompanied by the examination fee of $50, together with satisfactory proof that the applicant is of good moral character, is a citizen of the United States or has made a declaration of intention to become a citizen or, having made such declaration of intention, has filed a petition for naturalization within 30 days after becoming eligible to do so and is 21 years of age or over at the time of making the application. Subject to the provisions of Section 3a,[1] an application from a candidate who desires to secure a license from the department to practice dentistry or dental surgery in this State shall be accompanied by satisfactory proof that the applicant so applying for a license has been engaged in the actual, legal and lawful practice of dentistry

[1] Chapter 111, § 2207.

or dental surgery in some other state or territory for 5 consecutive years immediately prior to such application; or is a graduate of, and either has a diploma from, the facility of a reputable dental college, school or dental department of a reputable university, or has completed all of the requirements for graduation from such dental college, school or university and has delivered to the department a certificate executed under the seal institution by the dean, registrar or other duly authorized officer thereof, certifying to such completion and specifying the date upon which such applicant will receive his diploma; provided that in no event shall the department issue or cause to be issued to such applicant any license until he has actually obtained such diploma and exhibited same to the department. When such application and the accompanying proof are found satisfactory, the department shall notify the applicant to appear before it for examination at a time and place to be fixed by the department. Examination shall be made in writing in all theoretic subjects, both theoretic and practical examinations shall be of a character to give a fair test of the qualifications of the applicant to practice dentistry or dental surgery. The examination papers and all grading thereon, and the grading of the practical work, shall be deemed public documents, and preserved for a period of not less than 2 years after the department shall have made and published its decisions thereon. All examinations provided for in this Act shall be conducted by the department under fair and wholly impartial methods. A fee of $25 shall be charged for each subsequent examination.

If an applicant neglects, fails or refuses to take an examination for registration under this Act within 3 years after filing his application, the fee paid by the applicant shall be forfeited to the department and the application denied. However, such applicant may thereafter make a new application for examination, accompanied by the required fee.

Laws 1909, p. 277, § 3, eff. June 11, 1909. Amended by Laws, 1915, p. 497, § 1, eff. June 25, 1915; Laws 1935,

p. 965, § 1, eff. July 10, 1935; Laws 1939, p. 713, § 1, eff. July 13, 1939; Laws 1963, p. 1512, § 1, eff. July 15, 1963; P.A. 76-78, § 1, eff. July 1, 1969; P.A. 79-291, § 1, eff. Aug. 4, 1975.

§ 2217. Practice of dentistry—Acts constituting—Prima facie evidence—Exemptions

A person practices dentistry, within the meaning of this Act:

(1) Who uses a dental degree, or designation, or card, device, directory, sign, or other media whereby he represents himself as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of the human tooth, teeth, alveolar process, gums or jaw; or

(2) Who is a manager, proprietor, operator or conductor of a place where dental operations are performed; or

(3) Who performs dental operations of any kind gratuitously, or for a fee, gift, compensation or reward, paid, either to himself or to another person or agency; or

(4) Who uses a roentgen or X-Ray machine for dental treatment, roentgenograms or for dental diagnostic purposes; or

(5) Who extracts a human tooth or teeth or corrects or attempts to correct malpositions of the Human teeth or jaws; or

(6) Who offers and undertakes, by any means or method, to diagnose, treat or remove stains or concretions (accretions) from human teeth or jaws; or

(7) Who uses or administers local or general anesthetics in the treatment of dental or oral diseases or in any preparation incident to a dental operation of any kind of[1] character; or

(8) Who takes impressions of the human tooth, teeth, or jaws or performs any phase of any operation incident

---

[1] So in enrolled bill. Probably should read "or".

to the replacement of a part of a tooth, a tooth, teeth or associated tissues by means of a filling, crown, a bridge, a denture or other appliance; or

(9) Who furnishes, supplies, constructs, reproduces or repairs, or offers to furnish, supply, construct, reproduce or repair prosthetic dentures (sometimes known as "plates"), bridges or other substitutes for natural teeth, to the user or prospective user thereof; or

(10) Who performs any clinical operation included in the curricula of recognized dental schools and colleges.

The fact that any person engages in or performs, or offers to engage in or perform, any of the practices, acts, or operations set forth in this Section, shall be prima facie evidence that such person is engaged in the practice of dentistry.

The following practices, acts, and operations, however, are exempt from the operation of this Act:

(a) The rendering of dental relief in emergency cases in the practice of his profession by a physician or surgeon, licensed as such and registered under the laws of this State, unless he undertakes to reproduce or reproduces lost parts of the human teeth in the mouth or to restore or replace lost or missing teeth in the mouth; or

(b) The practice of dentistry in the discharge of their official duties by dentists in any branch of the Armed Services of the United States, the United States Public Health Service, or the United States Veterans Bureau; or

(c) Dental schools or colleges as now conducted and approved, or as may be approved, by the Department of Registration and Education, and the practice of dentistry by students or clinical instructors in the course of their teaching duties in dental schools or colleges approved by the Department, when acting under the direction and supervision of registered and licensed dentists acting as instructors; or

(d) The practice of dentistry by licensed dentists of other states or countries at meetings of the Illinois State Dental Society or component parts thereof, alumni meet-

ings of dental colleges, or any other like dental organizations, while appearing as clinicians; or

(e) The use of roentgen or other rays for making roentgenorgrams or similar records of dental or oral tissues provided, that such service shall not be offered to the public by any name whatsoever, as an aid or inducement to secure dental patronage; or

(f) The performance of any dental service by an appropriately trained dental assistant, if such service is performed under the direction and immediate supervision and full responsibility of a dentist licensed under this Act, provided, however, that such persons shall not be allowed to perform or attempt to perform any of the following services:

1) Any and all diagnosis of or prescription for treatment of disease, pain, deformity, deficiency, injury or physical condition of the human teeth or jaws, or adjacent structures.

2) Any and all removal of or restoration or addition to the hard or soft tissues of the oral cavity.

3) Any and all correction of malformation of teeth or of the jaws.

4) Administration of anesthetics (other than topical), except that said person may assist the dentist with this procedure.

5) Any removal of concretions (accretions) from human teeth.

6) Any and all taking of impressions for the fabrication of orthodontic appliances, prosthetic appliances, space maintainers, crowns, bridges, splints, inlays, onlays, or other restorative or replacement dentistry.

7) For the purpose of this subsection (f), "dental service" is defined to mean any intra-oral act which is included within the definitions of dentistry in Section 5, Paragraphs (1) through (10) of the Act but shall not include:

i. Any intra-oral service specifically forbidden by this subsection (f) or

ii. Any intra-oral procedure specifically granted to registered dental hygienists by Section 4(c) of this Act.[2] In addition, a dental hygienist may perform all services which may be performed by any appropriately trained dental assistant.

Laws 1909, p. 277, § 5, eff. June 11, 1909. Amended by Laws 1929, p. 551. § 1, eff. June 18, 1929; Laws 1933, p. 708, § 1, eff. July 7, 1933; Laws 1939, p. 714, § 1, eff. July 26, 1939; Laws 1945, p. 977, §1, eff. May 24, 1945; Laws 1963, p. 2686, § 1, eff. Aug. 9, 1963; P.A. 79-290, § 1, eff. Oct. 1, 1975; P.A. 79-555, § 1, eff. Oct. 1975; P.A. 79-1454, § 40, eff. Aug. 31, 1976.

§ 2218. Manufacture of dentures, bridges, or replacements for licensed dentists—Advertisements

Licensed dentists may employ or engage the services of any person, firm or corporation to construct or repair, extraorally, prosthetic dentures, bridges, or other replacements for a part of a tooth, a tooth, or teeth. A person, firm or corporation, so employed or engaged, when constructing or repairing such dentures, bridges or replacements, exclusively, directly and solely for licensed members of the dental profession, and not for the public or any part thereof, shall not be deemed or considered to be practicing dentistry as defined in this Act. However, it is unlawful to persons, firms or corporations so employed or engaged, to advertise in any manner the appliances constructed or repaired, or the services rendered in the construction, repair or alteration thereof, except, that persons, firms or corporations so employed may announce in trade journals and professional publications which circulate among members of the dental profession, their names, the locations or places of their business, their office hours, telephone numbers, and the fact that they are engaged in the construction, reproduction or repair of such appliances, together with such display advertisements as disclose the character and application of

[2] Chapter 111, § 2215.

their work, and persons, firms or corporations so employed or engaged may furnish to licensed dentists information regarding their products, materials, uses and prices therefor. Announcement may also be made by business card, in business and telephone directories, and by signs located upon the premises wherein the place of business is situated, but announcements made by business card or in business and telephone directories and signs shall not contain any amount as a price or fee for the services rendered, or to be rendered, or for any materials used or to be used, or any picture or other reproduction of a human head, mouth, denture or specimen of dental work or any other media calling attention of the public to their business. Announcements in business and telephone directories shall be limited to name, address and telephone number, and shall not occupy more than the number of lines necessary to disclose such information. The lettering on signs shall be no more than 7 inches in height and no illuminated or glaring light signs shall be used.

Laws 1909, p. 277, § 5a, added by Laws 1945, p. 977, § 1, eff. May 24, 1945. Amended by Laws 1959, p. 1461, § 1, eff. July 17, 1959.

§ 2219. Manufacture of dentures, bridges or replacements for licensed dentists—Work order—Subwork order-Penalties

(1) Any licensed dentist who employs or engages the services of any person, firm or corporation to construct or repair, extraorally, prosthetic dentures, bridges, or other replacements for a part of a tooth, a tooth, or teeth, shall furnish such person, firm or corporation with a written work order on forms prescribed by the Department of Registration and Education which shall contain: (a) the name and address of the person, firm or corporation to which the work order is directed. (b) The patient's name or identification number. If a number is used, the patient's name shall be written upon the duplicate copy of the work order retained by the dentist.

(c) The date on which the work order was written. (d) A description of the work to be done, including diagrams if necessary. (e) A specification of the type and quality of materials to be used. (f) The signature of the dentist and the number of his license to practice dentistry.

(2) The person, firm or corporation receiving a work order from a licensed dentist shall retain the original work and the dentist shall retain a duplicate copy thereof for inspection at any reasonable time by the Department of Registration and Education or its duly authorized agents, for a period of 3 years in both cases.

(3) If the person, firm or corporation receiving a written work order from a licensed dentist engages another person, firm or corporation (hereinafter referred to as "sub-contractor") to perform some of the services relative to such work order, he or it shall furnish a written sub-work order with respect thereto on forms prescribed by the Department of Registration and Education which shall contain: (a) The name and address of the sub-contrator. (b) a number identifying the sub-work order with the original work order, which number shall be endorsed on the work order received from the licensed dentist. (c) The date on which the sub-work order was written. (d) A description of the work to be done by the sub-contractor, including diagrams if necessary. (e) A specification of the type and quality of materials to be used. (f) The signature of the person, firm or corporation issuing the sub-work order. The sub-contractor shall retain the sub-work order and the issuer thereof shall retain a duplicate copy, attached to the work received from the licensed dentist, for inspection by the Department of Registration and Education or its duly authorized agents, for a period of 3 years in both cases.

(4) Any licensed dentist who: (a) employs or engages the services of any person, firm or corporation to construct or repair, extraorally, prosthetic dentures, bridges, or other dental appliances without first providing such person, firm or corporation with a written work order;

or (b) fails to retain a duplicate copy of the work order for 3 years; or (c) refuses to allow the Department of Registration and Education or its duly authorized agents, to inspect his files of work orders, is guilty of a Class A misdemeanor and the Department of Registration and Education may revoke or suspend his license therefor.

(5) Any such person, firm or corporation, who: (a) furnishes such services to any licensed dentist without first obtaining a written work order therefor from such dentist; or (b) acting as a sub-contractor as described in (3) above, furnishes such services to any person, firm or corporation, without first obtaining a written sub-work order from such person, firm or corporation; or (c) fails to retain the original work order or sub-work order, as the case may be, for 3 years; or (d) refuses to allow the Department of Registration and Education or its duly authorized agents, to inspect his or its files of work orders or sub-work orders, is guilty of a Class A misdemeanor.

Laws 1909, p. 277, § 5b, added by Laws 1959, p. 1461, § 1, eff. July 17, 1959. Amended by P.A. 77-2830, Art. 68, § 1, eff. Jan. 1, 1973.

§ 2242. Penalty for unlawful practice

Any person who practices or offers to practice dentistry in this State without being licensed for that purpose, or whose license has been suspended or revoked, or who violates any of the provisions of this Act, for which no specific penalty has been provided herein, is guilty of a Class A misdemeanor.

Laws 1909, p. 277, § 16, eff. June 11, 1909. Amended by Laws 1933, p. 708, § 1, eff. July 7, 1933; Laws 1945, p. 977, § 1, eff. May 24, 1945; Laws 1963, p. 2772, § 1, eff. Aug. 13, 1963; P.A. 77-2713, § 1, eff. Jan. 1, 1973.

§ 2244. Unlawful practice as public nuisance—Injunction

The practice of dentistry by any person who has not been duly licensed so to pratice or whose license has been suspended or revoked, or the doing, committing or continuing of any of the acts enumerated in Sections 5a, 18, 18a and 18b[1] by any person or persons, whether licensed dentists or not, is hereby declared to be inimical to public health and welfare and to constitute a public nuisance. The Attorney General for State of Illinois, the State's Attorney for any county in the State, or any resident citizen may maintain an action in the name of the people of the State of Illinois to perpetually enjoin any person from so unlawfully practicing dentistry and from the doing, committing or continuing of such unlawful act. In all proceedings hereunder the court, in its discretion, may apportion the costs among the parties interested in the suit, including cost of filing complaint, service of process, witness fees and expenses, court reporter charges, reasonable attorneys fees. This proceeding shall be in addition to and not in lieu of criminal prosecutions or proceedings to revoke or suspend licenses as authorized by this Act.

Laws 1909, p. 277, § 17a, added by Laws 1945, p. 977, § 1, eff. May 24, 1945. Amended by Laws 1963, p. 2773, § 1, eff. Aug. 13, 1963; Laws 1965, p. 3597, § 1, eff. Aug. 24, 1965.

---

[1] Chapter 111, §§ 2218, 2247, 2248.

In the

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 311

THE PEOPLE OF THE STATE OF ILLINOIS, EX REL. CHICAGO DENTAL SOCIETY, ETC., ET AL.,

Appellees,

vs.

A A A DENTAL LABORATORIES, INC., ETC., ET AL.,

(Defendants),

A-1 DENTAL PLATE LABORATORY COMPANY, INC.,

AN ILLINOIS CORPORATION, ET AL.,

AND

MARTIN DORNER, DOING BUSINESS AS CAPITOL DENTAL LABORATORIES, ETC., ET AL.,

Appellants.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT AS TO JURISDICTION

WERNER W. SCHROEDER and
OLIVER C. HEYWOOD,
One N. La Salle Street,
Chicago 2, Illinois.
Attorneys for Appellants.

Dated, August 10, 1956.

INDEX

	PAGE
The Opinion Below	1
The Grounds on Which the Jurisdiction of This Court Is Invoked	2
Nature of the Proceedings	2
Date of Judgment and of Notice of Appeal	4
The Statutory Provisions Believed to Confer Jurisdiction of the Appeal	5
Cases Believed to Sustain the Jurisdiction	5
The Statute Involved	6
Questions Presented by This Appeal	6
The Facts Material to Consideration of the Questions Presented	7
Reasons Why the Questions Presented Are so Substantial as to Require Plenary Consideration	10

APPENDIX.

Illinois Dental Practice Act	21
Opinion of Supreme Court of Illinois	48
Judgment of Supreme Court of Illinois	58
Order of Supreme Court of Illinois, Denying Petition for Rehearing	60

TABLE OF CASES AND STATUTES CITED.

CASES CITED.

Adams v. Tanner, 244 U. S. 590	6
Amsel v. Brooks, 141 Conn. 288, 106 A. 2d 152, 348 U. S. 880	12

PREVIOUS PAGE WAS BLANK

PAGE

Berry v. Summers, 283 P. 2d 1093, 1094 10

Doud v. Hodge, ... U. S. ..... (100 L. ed. 398) 5

Hood v. DuMond, 336 U. S. 525 5

Lasdon v. Hallihan, 377 Ill. 187 13

Liggett Co. v. Baldrige, 278 U. S. 105 5

Lincoln Fed. L. U. v. Northwestern I. & M. Co., 335 U. S. 525 5

McLean v. Arkansas, 211 U. S. 539 5

Meyer v. Nebraska, 262 U. S. 390 5

New State Ice Co. v. Liebmann, 285 U. S. 262 (dissent, p. 302) 5

People v. Brown, 407 Ill. 565 .....13, 14, 17

Powell v. Pennsylvania, 127 U. S. 678 5

Royster Guano Co. v. Virginia, 253 U. S. 412 5

Schroeder v. Binks, 415 Ill. 192 .....13, 14, 17

Skinner v. Oklahoma, 316 U. S. 535 5

Travelers Health Asso. v. Virginia, 339 U. S. 643 5

Williamson v. Lee Optical of Okla., 348 U. S. 483 11

Constitution and Statutes Cited.

Fifth Amendment to the Constitution of the United States 7, 8

Fourteenth Amendment to the Constitution of the United States 3, 7, 8

Ill. Rev. Stat., 1955, Chapter 91, Sections 56a, 58, 60, 60a, 71a, 72, 72a and 72b (Vol. II, pp. 90-98) 3, 5, 14

Title 28 U. S. C. A. Section 1257(2) 5

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956.

No. 311

THE PEOPLE OF THE STATE OF ILLINOIS, EX REL. CHICAGO DENTAL SOCIETY, ETC., ET AL.,

Appellees,

vs.

A A A DENTAL LABORATORIES, INC., ETC., ET AL.,

(Defendants),

A-1 DENTAL PLATE LABORATORY COMPANY, INC.,

AN ILLINOIS CORPORATION, ET AL.,

AND

MARTIN DORNER, DOING BUSINESS AS CAPITOL DENTAL LABORATORIES, ETC., ET AL.,

Appellants.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT AS TO JURISDICTION

(a) THE OPINION BELOW.

The opinion of the Supreme Court of the State of Illinois is reported in 8 Ill. 2d 330, 134 N. E. 2d 285. A copy is appended.

(b) THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

(i) Nature Of The Proceedings.

This suit, praying the issuance of permanent injunctions against appellants here, was instituted in the Superior Court of Cook County, Illinois, in the name of the People of the State of Illinois on the relation of Chicago Dental Society and certain dentists, individually and as officers and directors of said Society, and as members of its Committee on Legislation and Law Enforcement. The defendants are certain individuals and corporations charged with having violated the Dental Practice Act of Illinois in furnishing, selling, supplying, constructing, reproducing or repairing prosthetic dentures, sometimes called "plates" and sometimes "false teeth."

The gravamen of the offense charged is that such act or acts were done directly for the user rather than on the basis of employment brokered through licensed dentists, the substance of the Illinois statute being that if employment alone (not prescription or supervision) is by a dentist, the doing of the work is legal,—if the employment is not so made the same work is illegal.

The action was tried on the amended complaint to which motions to strike were made, challenging the constitutionality of the sections of the Act involved as being in violation of both the Federal and State Constitutions. After such motions were overruled as to the substantial matters, the defendants filed answers, and throughout the proceedings, in their answers and thereafter in the proceedings in the Superior Court and later in the Illinois Supreme Court, insisted upon the unconstitutionality both under the Federal and State Constitutions of those parts of the Dental Practice Act upon which plaintiffs relied.

It will be noted from the opinion sought to be reviewed that the due process and equal protection objections under the Fourteenth Amendment were preserved in the record, urged before the highest court of Illinois, considered by that Court and mentioned in the opinion.

The amended complaint specifically relied upon Sections 1a, 3, Section 5 (Subparagraphs (2), (3), (8), (9) and (10)), Sections 5a, 17a, 18, 18a and 18b of the Dental Practice Act (Illinois Revised Statutes, 1955, Chapter 91, Sections 56a, 58, 60, 60a, 71a, 72, 72a and 72b, Vol. II, pp. 90-98). (See Appendix hereto.)

The basic sections assailed are Subparagraphs (8) and (9) of Section 5 and separate Section 5a.** The other sections* are incidentally involved but come into operation only if the basic sections, mentioned in this paragraph, are constitutional.

The case was decided by the trial court on the theory:

(a) That any person, firm or corporation furnishing, constructing, reproducing, relining or repairing false teeth was engaged in the practice of dentistry if such work was done "directly for the user or prospective user" thereof;

(b) That *any* person, firm or corporation, that did the same work directly and solely on employment by licensed dentists was not practicing dentistry and therefore not violating the law;

(c) That if any defendant did part of his work for a licensed dentist, but part directly for the user or prospective user, he was practicing dentistry and violating the law; and that even that part done on employment by a dentist was unlawful.

It was not the theory of the decree that the doing of such work with reference to false teeth was, *per se*, the

---

** Marked ** in copy of statute in appendix.

* Marked * in copy of statute in appendix.

practice of dentistry. Whether it was or was not turns solely on who employed the person, firm or corporation to do it.

The lower court held with certain defendants, when the work was in aaccordance with an impression made by a licensed dentist, who gives an order or prescription therefor and who makes the fitting thereof in the oral cavity.

The Supreme Court of Illinois sustained the decree of the lower court in holding that any work done by defendants when the employment was not made by a licensed dentist was unlawful. It reversed the part holding that the work was lawful when the impression was made by such a dentist who gave an order or prescription therefor and made the fitting in the oral cavity.

The issue presented in the trial court and in the Supreme Court of Illinois was whether the statute, which confers power upon a dentist or dentists, by mere employment, to make legal or, by non-employment, to make illegal, the work of a laboratory technician, is a constitutional grant of power.

(ii) Date Of Judgment And Of Notice Of Appeal.

The final judgment of the Supreme Court of Illinois sustaining the decree of the Superior Court of Cook County, Illinois, in part and reversing it in part, which judgment of the Supreme Court of Illinois is here sought to be reversed, was entered on March 22, 1956 (Petition for Rehearing was filed April 5, 1956; order denying the Petition for Rehearing was entered on May 22, 1956).

The Notice of Appeal was filed on June 15, 1956, in the Supreme Court of Illinois.

(iii) The Statutory Provisions Believed To Confer Jurisdiction Of The Appeal.

This Court has jurisdiction of this appeal under U.S. C.A., Title 28, Section 1257(2).

(iv) Cases Believed To Sustain The Jurisdiction.

The following cases are believed to sustain the jurisdiction of this appeal:

New State Ice Co. v. *Liebmann,* 285 U. S. 262 (see also dissent, p. 302).
Powell v. *Pennsylvania,* 127 U. S. 678.
Adams v. *Tanner,* 244 U. S. 590.
Meyer v. *Nebraska,* 262 U. S. 390.
McLean v. *Arkansas,* 211 U .S. 539.
Liggett Co. v. *Baldrige,* 278 U. S. 105.
Travelers Health Asso. v. *Virginia,* 339 U. S. 643.
Lincoln Fed. L. U. v. *Northwestern I. & M. Co.,* 335 U. S. 525.
Hood v. *DuMond,* 336 U. S. 525.

On the objection that the statute violates the equal protection clause of the Fourteenth Amendment to the United States Constitution, the jurisdiction of the Court is sustained by:

Skinner v. *Oklahoma,* 316 U. S. 535.
Royster Guano Co. v. *Virginia,* 253 U. S. 412.
Doud v. *Hodge,* ..... U. S. ..... (100 L. ed. 398).

(v) The Statute Involved.

This case involves the validity of Section 5a and Subsections 8 and 9 of Section 5 of the Dental Practice Act (and the other sections relied on by plaintiffs, namely, Sections 1a, 3, 17a, 18, 18a and 18b, insofar as they are dependent upon, or brought into operation by, said Sec-

tion 5a and Subsections (8) and (9) of Section 5 of the Dental Practice Act); said Act being "An Act to regulate the practice of dental surgery and dentistry in the State of Illinois and to repeal certain acts therein named," approved June 11, 1909, as amended by an Act of 1945 (Ill. Rev. Stat. 1955, Chapter 91, Sections 56a, 58, 60, 60a, 71a, 72, 72a and 72b, Vol. II pp. 90-98).

The statutory provisions involved are lengthy, and the text of the entire statute is set forth in the Appendix. Only the validity of the sections referred to in the last paragraph is involved. The objectional features of those sections were added by the 1945 amendment.

(c) QUESTIONS PRESENTED BY THIS APPEAL.

The following questions are presented as stated in the Notice of Appeal:

(1) Whether the sections of the Illinois Dental Practice Act, insofar as they apply to laboratory technicians (being those who, in accordance with the custom throughout the United States, design, supply, construct, reproduce or repair prosthetic dentures, sometimes known as "plates" or "false teeth"), are a violation of the due process clause of the Federal Constitution (Fourteenth Amendment), in that the right of such technicians to carry on their occupation is dependent entirely upon the uncontrolled and unregulated whim of licensed dentists, who, by mere employment of a technician, make his activity lawful, or by failure to employ, make the technician's activity unlawful and criminal.

(2) Whether since the statute does not prescribe any qualifications that a technician must have, and since it requires no supervision, direction or prescription by the dentist of the work to be done, and since the right of the technician to carry on his occupation depends solely on

whether he is or is not employed by a dentist, the statute is unreasonable, arbitrary and capricious or without real or substantial relation to the objects sought to be attained and therefore lacking in due process.

(3) As the statute provides no qualifications, either educational, or in experience or otherwise, of dental technicians, provides for no licensing of them by any State agency or department and allows the technician to engage or not engage in his occupation, dependent solely on the uncontrolled and unregulated will of a dentist or dentists, and permits the dentists to *terminate the right* to carry on the occupation upon any ground or upon any whim, with no judicial review of either the law or facts, whether the statute has provided due process, in other words, whether no process of law is due process of law.

(4) Whether, since the laboratory technician's right to carry on his occupation is dependent solely on the autocratic and unregulated action of a dentist, and since a technician of great ability may never be employed and another of far less or no ability may be employed, the statute violates the equal protection clause of the Fourteenth Amendment to the Federal Constitution.

(d) THE FACTS MATERIAL TO CONSIDERATION OF THE QUESTIONS PRESENTED.

The Federal questions raised and considered below were as follows (references to that portion of the record contained in Appellants' Abstract (attached to Record page 5) will be referred to as 'Appts.' Abst. p. ....."):

Defendants' motions to strike the amended complaint, among other constitutional objections, alleged that the Illinois Dental Practice Act violated the Fifth and Fourteenth Amendments to the United States Constitution (Appts.' Abst. p .27).

The lower court's order on the motions to strike held that Section 5a of the Illinois Dental Practice Act in certain respects violated the Fifth and Fourteenth Amendments to the United States Constitution, but that those portions were severable from the rest of the Act (Appts.' Abst. pp. 34-35), but this holding of unconstitutionality was later reversed by the Illinois Supreme Court. See, for example, Appts.' Abst. p. 279, par. 99(a); also, opinion of Illinois Supreme Court, Record pp. 12, 19, and Judgment of Illinois Supreme Court, Record p. 20. (Said opinion and order are also in the appendix hereto.)

Defendants' answers realleged the constitutional objections under the Fifth and Fourteenth Amendments to the Constitution of the United States (paragraphs 8(e) and (f) and 12, Appts.' Abst. pp. 42, 43). Defendants' exceptions to the Master's Final Report objected on the ground of the Fifth and Fourteenth Amendments to the Constitution of the United States (Appts.' Abst. p. 217).

The constitutional objections under the Fourteenth Amendment to the Constitution of the United States were also properly raised in defendants' brief in the Supreme Court of Illinois and were considered by the Court as shown in its opinion, Record pp. 13, 19.

The evidence of plaintiffs and defendants in this record shows the extensiveness of the work of dental laboratories. The individuals doing the work are sometimes called dental technicians.

The work of dental technicians has become an occupation and independent calling separate and apart from the dental profession. The profits of both parties demonstrate without question that the major part of the work of making, reproduction or repair of dentures (false teeth), that is, at least 90%, is done by dental technicians who are not dentists and who work in dental laboratories.

The dental schools have on their staff laboratory technicians who are not dentists to whom the laboratory procedures are turned over. The senior students in dental schools work on possibly two to four plates. Any other laboratory work is done by the school's laboratory technicians. Several of the dentists who testified for plaintiffs testified that they send out all of their laboratory work to dental technicians. It was also established that there was no such thing as a prescription for a dental plate, although, at most, some dentists issue what are called work orders. A few dentists have a laboratory in their own offices with technicians who are not licensed dentists.

It was shown that a busy dentist finds it preferable to send more and more of his work to a laboratory because of its experience. In some cases impressions or casts are sent to the laboratory but in some not.

In the University of Illinois College of Dentistry, students do work on dentures, but they have two trained dental technicians (not dentists) who supervise the laboratory procedures.

At the present time there are 300 and possibly more dental laboratories in the City of Chicago alone. These businesses, with few exceptions, are owned and operated by non-dentists and are independent of a dental office, although a few do their work in connection with a dental office.

The making of dentures by dentists themselves has become a lost art.

The findings of the decree in the lower court were based largely on the premise that the defendants do not work exclusively for dentists.

(e) REASONS WHY THE QUESTIONS PRESENTED ARE SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION.

Due Process.

The sections of the statute here involved go farther than any similar regulatory statute that has been considered by this or other courts, except perhaps one, which was held unconstitutional by the Supreme Court of Idaho in *Berry v. Summers, 283 P. 2d 1093. Even that was not as extreme as the Illinois Code here involved.

Defendants have conceded that the making and fitting of false teeth is a matter affecting public health and could

---

* In that case the constitutional objections of the dental technicians were well summarized by the court as follows (283 P.2d 1094):

> "Appellants contend *inter alia* that they engage in an ordinarily useful, independent occupation or calling, which has been for a long time past and now is legislatively recognized as an independent calling and as having an independent occupational nature of its own, wholly disconnected from the practice of dentistry as such as ordinarily and customarily understood and regarded; that they perform merely mechanical work upon inert matter in their dental laboratories. They assert that the regulation attempted to be imposed by the 1953 amendment is designed and intended for the benefit of a class, *i.e.*, the dentists; that it is an arbitrary, unreasonable and discrimnatory regulation; that if it is permitted to be enforced such would deprive them of their large sums of capital invested in their dental laboratories, and of their means of livelihood, and thereby would deprive them of liberty and property without due process of law, in contravention of Article I, §§ 1 and 13 of the Constitution of the State of Idaho, and of the Fourteenth Amendment of the Constitution of the United States."

These contentions were sustained by the Idaho court.

be regulated by constitutional methods, as are the occupations of pharmacists, optometrists, opticians, and others who though not members of the medical profession deal with matters affecting public health. The vice of the Illinois Act can best be illustrated by comparison with the situation found in a recent case decided by this Court: *Williamson* v. *Lee Optical of Okla.*, 348 U. S. 483. That case upheld an Oklahoma Act regulating opticians, and it contains a concise description of the occupations relating to the prescribing and making of eyeglasses.

Neither an optometrist nor an optician is a medical doctor. Nor are they captives of the related medical doctor—the ophthalmologist. A person may go to an ophthalmologist and have glasses prescribed. He is then free to go to any optometrist or optician of his choice to have the glasses made and fitted (or he may go directly to an optometrist without consulting a medical doctor at all). An optician or optometrist, whether or not he is regulated by statute, is free to go into business and deal with the general public.

The situation of the dental patient and the dental technician in Illinois is far removed from this pattern. In Illinois a person who goes to a dentist and has false teeth prescribed is not free to go to a dental technician of his own choosing to have his false teeth made. In Illinois a dental technician cannot take a designated course of training, qualify and become licensed by the State and then go into business and deal with members of the general public. The means of becoming eligible to deal with the public is not available. The making of false teeth, which is a parallel situation to the making of eyeglasses, is controlled throughout by the dentist. So is the maker of false teeth. Neither the maker nor the making of eyeglasses

is controlled by the ophthalmologist. Nor is the pharmacist or the making of a medical prescription controlled by the medical doctor. In each of the latter two cases, the patient of the medical doctor is free to go to an artisan of his own choosing and the public can be protected by comprehensive requirements for qualification and licensing of such artisans.

The vice of the Illinois Act is further illustrated by another case which came before this Court: *Amsel* v. *Brooks*, 141 Conn. 288, 106 A. 2d 152 (348 U.S. 880). That was a case involving the Connecticut statute regulating dental technicians. This Court dismissed the appeal for want of substantial Federal question. But before the case came to this Court, the Supreme Court of Connecticut held unconstitutional a portion of the statute on the very ground urged here; namely, that it made the technicians "dependent exclusively upon the customers a licensed dentist may send to them," saying:

> "The connection between such a drastic and unreasonable regulation and the public welfare is so tenuous that, upon the principles hereinbefore stated, the portion of the statute relating to advertising cannot be legally justified. We hold this portion to be unconstitutional."

The Illinois statute aims to do exactly what the Supreme Court of Connecticut held was unconstitutional when inferentially accomplished by the statute.

The following elements are absent in this Illinois statute—elements which historically have been considered indispensable to due process in the regulation of occupations or professions: (a) The rules for admission to the occupation—citizenship, character, education, experience—are usually definitely prescribed by the legislature—but not here; (b) An executive department is given power to ad-

minister the rules—by examination or otherwise to determine compliance with them—but not in this statute: (c) Ouster from the occupation is according to usual administrative practice, and follows only after a hearing—no such procedure is provided here; (d) Misapplication of the rules or manifest disregard of evidence is controlled by the courts through administrative review—but not in this instance.

The presence of those parts of a regulatory scheme is due process as Illinois and other states have usually practiced it. Here, however, every one of those elements is missing in the statute. This statute is a radical departure from due process as usually understood. Under the parts of the statute here assailed, a favored class, having a financial interest, is given all of the powers usually exercised by government without rules to guide its action, without intervention or impartial action by a state agency and without possibility of resort to the courts.

The decision of the Supreme Court of Illinois creates a new doctrine—that a certain class—on account of its college training or on account of some other merit—may be endowed with the absolute powers of government, without restraint or review—powers that have heretofore been exercised by three departments of government, with each empowered to inhibit errors or excesses on the part of others.

The Supreme Court of Illinois has held in *People* v. *Brown*, 407 Ill. 565, and *Schroeder* v. *Binks*, 415 Ill. 192, that master plumbers cannot in accordance with due process be given sole power to employ apprentice and journeymen plumbers and thus become their exclusive educators. But as to dentists, that Court has now held that dentists may be given even greater power: that is, the power arbi-

trarily to make one a dental technician without regard to his education, training or experience, and by the same power prevent a person from becoming a technician, even though his prior education, training, and experience have equipped him with great ability. The effect of the opinion of the Illinois Court is to hold that no process is due process—when control is given to a favored few.

The Illinois Supreme Court in its opinion in the case at bar relied on an earlier case. *Lasdon* v. *Hallihan*, 377 Ill. 187. We contended that that case decided only the specific question of the validity of prohibiting a dentist from obtaining employment indirectly through advertising done by a laboratory, and was not applicable, and that part of the opinion dealing with dental technicians was dictum; that if the dictum were considered to be the law of Illinois, it was necessarily overruled by the later cases of *People* v. *Brown*, 407 Ill. 565, and *Schroeder* v. *Binks*, 415 Ill. 192. Also *Lasdon* v. *Hallihan*, 377 Ill. 187, was decided on a prior version of the statute which did not go nearly as far as the 1945 amendment. Even that version was probably violative of the state and federal constitutions.

Two of the basic paragraphs of the statute, namely, Section 5, Subparagraphs (8) and (9), now provide, in effect, that one who furnishes, supplies, constructs, reproduces or repairs plates, or offers to do so, is engaged in the practice of dentistry and must before he may do so on his own initiative have all the qualifications for the admission to practice of a dentist; and must be so licensed. However, Section 5a, which is particularly assailed, provides:

> "Licensed dentists may employ or engage the services of *any* person, firm or corporation to construct or repair, extra-orally, prosthetic dentures, bridges, or other replacements for a part of a tooth, a tooth,

> or teeth. A person, firm or corporation so employed or engaged, when constructing or repairing such dentures, bridges or replacements, exclusively, directly and solely for licensed members of the dental profession, and not for the public or any part thereof, shall not be deemed or considered to be practicing dentistry as defined in this Act." (Italics supplied).

The effect of these provisions is to make it unlawful for a laboratory technician to take impressions for false teeth or make or repair them except when engaged or employed to do so by a licensed dentist. If however, *any person, firm or corporation* is so engaged or employed, his or its activity becomes lawful. This is the gist of the extraordinary power granted by the statute.

The statute creates in this area of the government of Illinois a government of men rather than a government of law. It is a fundamental departure from due process as it has been known in the United States.

Another strange aspect is that a corporation may not under the statute practice dentistry or make or repair dentures, but a licensed dentist may employ any corporation to do the work of a technician; with such employment, the activity of that corporation becomes legal and approved, and that without regard to the powers given it by the State in its charter.

The lack of due process in this Act may be summarized in the following words:

> (a) Whether a person, firm or corporation may make dental plates depends completely on the whim of a licensed nentist.
>
> (b) The dentist is not required to order or prescribe the plate or to make the impressions or to place the plate in the oral cavity—the dentist is required to do *nothing* in the way of prescribing or supervision of the work.
>
> (c) All that is required is that the dentist be the broker between the member of the public and the laboratory technician who makes the false teeth.

When the dentist is permitted to dominate the situation and to farm out the employment, the work of the laboratory technician is made legal, even though the dentist does no work or does not even touch the denture. If, however, the member of the public does not first hire a dentist who then doles out the work, the same activity of the laboratory technician becomes unlawful.

(d) The dentist is given no professional responsibility; he is merely given commercial control of the employment or non-employment.

(e) The Act contains no prescription of the education, training, experience or qualification of the person, firm or corporation whom, or which, the dentist may employ. Under this statute, the dentists could set up someone in business who has had neither training nor experience. On the other hand, a person may be ever so able and experienced in this work, but unless he gains the favor—by some means or other—of a dentist or dentists, he cannot earn his livelihood.

(f) Not only are there no rules governing who may do the work (other than that the work must be brokered through a dentist), but the entire decision as to who may or may not do such work is delegated by the general assembly to a licensed dentist or dentists.

(g) The statute gives the dentists a complete monopoly, uninhibited by any rules of conduct as to who may carry on the work of a laboratory technician, or who, on the other hand, *is going to be put out of business.*

(h) Obviously, there is a lack of uniformity, as one dentist or group of dentists may use one standard as to who is employed and another a different one.

The provisions of the statute here assailed are more consistent with feudalism than with due process.

This statute represents the extreme in the lack of due process.

EQUAL PROTECTION.

The objection that the provisions of the statute under discussion violate the equal protection clause of the Fourteenth Amendment has been made throughout the proceeding in the lower courts and was rejected by the Supreme Court of Illinois in its opinion.

It is obvious that under these statutory provisions, a person's training, character and ability in the making of dentures will not entitle him to a right to do this work. In effect, he may be licensed only by a dentist or dentists. On the other hand, Section 5a provides specifically that the dentist may employ *any* person, firm or corporation to do this type of work. It is not provided that such person must have any training or any experience or any ability. He may be made into a laboratory technician by the arbitrary and whimsical action of a dentist or dentists. Thus, men of great ability may be rejected, and those of mediocre or no ability may be employed to do the work.

Mere statement of the provisions of the statute indicates that men of equal talent do not have equal opportunity in this field of economic activity. The right of a technician to carry on his occupation is dependent exclusively upon the grace of the dentist or dentists. Thus, people in equal circumstances, as respects their education, training and capabilities, have no equal protection in the law.

Moreover, the decisions of the Supreme Court of Illinois have emphasized this lack of equal protection. As pointed out, in the plumbers licensing cases statutes were involved that gave to master plumbers the sole power to determine who might get the apprentice training and who might thus work his way up to the status of a journeyman plumber and eventually to that of a master plumber. On many grounds that statute was held to violate the Illinois and the Federal Constitutions, the court saying at p. 573 of 407 Ill.: "No matter how well qualified a person may be by instruction or training he can never of his own free will and choice become a certified registered plumber's ap-

prentice, a journeyman plumber or master plumber, unless a licensed master plumber so wills." These were the rulings in *People* v. *Brown,* 407 Ill. 565, and *Schroeder* v. *Binks,* 415 Ill. 192. Here, however, the dentists have more extensive power. A person may have had all requisite preparatory training and experience and yet his right to work depends upon a whimsical decision by a dentist or dentists—a decision that may be based on sound grounds, or on economic advantage to the dentist brokering the employment, or on personal likes or dislikes or as vehemently stated by the Supreme Court of Illinois in the *Brown* case, upon "the facts of race, creed or color." (p. 574).

Thus, under the decisions of the Supreme Court of Illinois on these two statutes—the one pertaining to apprentice, journeymen and master plumbers; the other pertaining to laboratory technicians—the State of Illinois, through its Supreme Court, has denied equal protection of the law by failing to apply a like principle to dentists as to master plumbers.

The decision sought to be reviewed says (Record p. 16; Appendix p. 54):

> "Any person is free to become a dental laboratory technician. The statute places no artificial restraint upon him. His success is determined by the normal process of competition."

This emphasizes the point of objection that is made. Any person is free to become a technician—*if* he is employed by a dentist. If not so employed, he is not free to become one.

The statute *does* place an artificial restraint upon him in that there is nothing in the statute which guarantees him the right to carry on his occupation—nothing except the favor he can gain by one means or another with those who are licensed dentists.

It would seem that the statutory provisions under attack are a clear denial of equal protection. They do not even guarantee equal protection by the dentists. The latter are given greater powers than are given to the government itself under State and Federal Constitutions.

It is urged that the jurisdiction of this Court is clear, and that this appeal is substantial in that it submits constitutional questions that are vital to the rights of these appellants as well as to the rights of all citizens of the United States.

Respectfully submitted,

WERNER W. SCHROEDER AND
OLIVER C. HEYWOOD,
One N. LaSalle Street,
Chicago 2, Illinois,
Attorneys for Appellants.

APPENDIX.

COPY OF STATUTE HERE INVOLVED.*

Illinois Revised Statutes, 1955, Chapter 91, Sections 56 to 72h, inclusive. Vol. II pp. 90-98.

DENTAL SURGERY.

AN ACT to regulate the practice of dental surgery and dentistry in the State of Illinois, and to repeal certain acts therein named. [Approved June 11, 1909. L. 1909, p. 277.]

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

56. § 1. Repealed. Act approved July 10, 1935. L.1935, p. 965.

56a. *Legislative declaration—Liberal construction.*] **§ 1a. The practice of dentistry in the State of Illinois is hereby declared to affect the public health, safety and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the dental profession merit and receive the confidence of the public and that only qualified persons be permitted to practice dentistry in the State of Illinois. This Act shall be liberally construed to carry out these objects and purposes. Added by act approved May 24, 1945. L.1945, p. 977.

57. § 2. Repealed. Act approved July 10, 1935. L.1935, p. 965.

57a. *Severability—Partial invalidity.*] § 2a. This Act is declared to be severable, and should any word,

---

** The sections of the statute so marked are primarily involved in this appeal.

* The sections of the statute so marked are incidentially involved in this appeal.

Those sections not marked are not involved in this appeal.

PREVIOUS PAGE WAS BLANK

phrase, sentence, provision or section hereof be hereafter declared unconstitutional or otherwise invalid, the remainder of this Act shall not thereby be affected, but shall remain valid and in full force and effect for all intents and purposes. Added by act approved May 24, 1945. L.1945, p. 977.

*58. *Dentistry or dental surgery—Who may practice — License — Application — Fee — Eligibility — Examination.*] § 3. No person, unless previously registered or licensed to practice dentistry in this State at the time this Act shall become operative, shall begin the practice of dentistry or dental surgery, or any branches thereof, without first applying for and obtaining a license for such purpose from the Department of Registration and Education, hereinafter referred to as the "department." Application shall be made to the department in writing, and shall, in every instance, be accompanied by the examination fee of twenty dollars ($20.00), together with satisfactory proof that the applicant is of good moral character, is a citizen of the United States or has made a declaration of intention to become a citizen or, having made such declaration of intention, has filed a petition for naturalization within thirty days after becoming eligible to do so and is twenty-one years of age or over at the time of making the application. An application from a candidate who desires to secure a license from the department to practice dentistry or dental surgery in this State shall be accompanied by satisfactory proof that the applicant so applying for a license has been engaged in the actual, legal and lawful practice of dentistry or dental surgery in some other state or territory for five consecutive years immediately prior to such application; or is a graduate of, and has a diploma from, the faculty of a reputable dental college, school or dental department of a reputable university. When such application and the accompanying proof are found satisfactory, the department shall notify the applicant to appear before

it for examination at a time and place to be fixed by the department. Examination shall be made in writing in all theoretic subjects, both theoretic and practical examinations shall be of a character to give a fair test of the qualifications of the applicant to practice dentistry or dental surgery. The examination papers and all grading thereon, and the grading of the practical work, shall be deemed public documents, and preserved for a period of not less than two years after the department shall have made and published its decisions thereon. All examinations provided for in this Act shall be conducted by the department under fair and wholly impartial methods. As amended by act approved July 13, 1939. L.1939, p. 713.

58a. *Powers and duties of department.*] § 3-a. The Department of Registration and Education shall exercise, but subject to the provisions of this Act, the following functions, powers and duties:

(1) Conduct examinations to ascertain the qualifications and fitness of applicants for dental licenses, pass upon the qualifications of applicants for reciprocal licenses, and issue licenses to such as are found to be fit and qualified.

(2) Prescribe rules and regulations for a method of examination of candidates.

(3) Prescribe rules and regulations defining what shall constitute a school, college or university or department of a university, or other institution, reputable and in good standing, and to determine the reputability and good standing of a school, college or other institution reputable and in good standing, by reference to a compliance with such rules and regulations; provided that no school, college or university, or deparment of a university or other institution that refuses admittance to applicants solely on account of race, color or creed shall be considered reputable and in good standing.

(4) Establish a standard of preliminary education deemed requisite to admission to a pre-professional school, college or university, for eligibility to dental

licensure in the State of Illinois, and to require satisfactory proof of the enforcement of such standard by said pre-professional schools, colleges and universities.

(5) Conduct hearings on proceedings to revoke, suspend, or on objection to the issuance of licenses of persons applying for licenses or licensed under the provisions of this Act and to refuse to issue, revoke or suspend such licenses.

(6) Formulate rules and regulations required for the administration of this Act.

None of the foregoing functions, powers or duties enumerated shall be exercised by the Department of Registration and Education except upon the action and report in writing of the examining committee which shall be composed of persons designated from time to time by the Director of Registration and Education to take such action and to make such report for the profession involved herein, as follows:

Five (5) persons, each of whom has been a licensed practitioner of dentistry, or dental surgery in this State for a period of five years or more, and no one of whom is in any way connected with or interested in any dental college, or dental department of any institution of learning.

The action or report in writing of a majority of the Committee designated shall be sufficient authority upon which the Director of Registration and Education may act.

Whenever the Director is satisfied that substantial justice has not been done either in an examination or in the revocation, suspension or refusal to issue a license, he may order a re-examination or rehearing by the same or other examiners.

The department shall demand that every applicant for a license to practice dentistry shall:

1. Be a citizen of the United States or have first papers for naturalization.

2. Be a graduate or have fifteen units of high school work in acceptable subjects from a high or

other secondary school approved by the Department of Registration and Education.

3. Present satisfactory evidence of completion of pre-dental and dental education under one of the following plans:

(a) Completion of a minimum of thirty (30) semester hours of collegiate credit in acceptable subjects from a college or university approved the department, and graduation from a dental college, school or dental department of an institution requiring four courses of instruction of at least eight months each, approved by the department.

(b) Completion of a minimum of sixty (60) semester hours of collegiate credit in acceptable subjects from a college or university approved by the department, and graduation from a dental college, school, or dental department of an institution requiring three courses of at least eight months each, approved by the department.

(c) For applicants who completed their dental education prior to July 7, 1933, and have engaged in the practice or the teaching of dentistry since completing their education, graduation from a dental college, school or dental department of a university considered reputable by the Illinois State Board of Dental Examiners or approved by the Department of Registration and Education at the time of such applicant's graduation.

(d) For applicants who completed their dental education after January 1, 1944, completion of a minimum of sixty (60) semester hours of collegiate credit in acceptable subjects from a college or university approved by the department, and graduation from a dental college, school, or dental department of an institution requiring four courses of instruction of at least eight months each, approved by the department.

4. Submit, for the files of the department, a recent picture duly identified and attested.

5. Pass an examination given by the Department of Registration and Education in the theory and practice of the science of dentistry; provided, that the de-

partment may recognize a certificate granted by the National Board of Dental Examiners in lieu of, or subject to, such examination as may be required. Provided, however, that nothing in this Act shall be construed to prevent any dental school which may de sire to do so from establishing for admission a higher standard of preliminary education than specified in this Act. As amended by act approved May 24, 1945. L. 1945, p. 977.

58b. *Qualifications of applicants.*] § 3b. The department shall demand that every applicant for a certificate of registration as a dental hygienist shall:

1. Be a citizen of the United States or have first papers for naturalization.

2. Be a graduate of or have fifteen units of high school work from a high school or other secondary school approved by the department.

3. Present satisfactory evidence of having received two years of credit in a college of dental hygiene, each year's work to consist of at least thirty-two weeks in a college reputable and in good standing by reference to a compliance with rules established by the department.

4. Submit for the files of the department a recent picture duly identified and attested.

5. Pass an examination given by the department in the subjects usually taught in reputable colleges of dental hygiene approved by the department, which examination shall be such in the judgment of the department as will determine the qualifications of applicants to perform the operative procedure of dental hygiene. Added by act approved July 25, 1945. L. 1945, p. 986.

59. § 4. Repealed. Act approved July 10, 1935. L. 1935, p. 965.

59a. *License, qualification for special practice.*] § 4a. The department is hereby empowered to establish higher standards for and make additional requirements of any licensee who announces or holds himself out to the public as a specialist or as being specially quali-

fied in any particular branch of dentistry; and it is provided, further, that the department may issue a certificate, authorizing practice as a specialist in any particular branch of dentistry, to any licensee who has complied with the requirements established for that particular branch of dentistry at the time of making application, upon payment of twenty-five dollars ($25.00).

No licensee shall announce or hold himself out to the public as a specialist or as being specially qualified in any particular branch of dentistry, unless he has been in the practice of dentistry for five years, or more, prior to making application for certificate to practice as a specialist, and has complied with the additional requirements, established by the Department, for practice in that specialty of dentistry.

The fact that any licensee shall announced by card, letterhead, or any other printed matter using such terms as "Specialist," "Practice Limited to" or "limited to Specialty of" with the name of such branch of dentistry practiced as a specialty, or shall use equivalent words or phrases to announce the same, shall be prima facie evidence that such licensee is practicing as a specialist. [Added by act approved July 7, 1933. L. 1933, p. 708.]

59b. *Certificate of registration.*] § 4b. The department shall issue a certificate of registration to every applicant who passes the examination for registration as a dental hygienist, under which certificate he shall be entitled to perform the operative procedure of dental hygiene as a certified dental hygienists, unless and until such certificate shall be suspended, revoked or forfeited as provided in this Act. Added by act approved July 25, 1945. L. 1945, p. 986.

59c. *Employment of dental hygienists by dentists—Permissible acts—Supervision—Display of certificate.*] § 4c. Licensed dentists may employ or engage the services of registered dental hygienists, hereinafter set forth in this act, to remove the stains or concretions (accretions) from the exposed surfaces of the

teeth, such an operative procedure hereinafter referred to as dental hygiene, but shall not diagnose any condition of or perform any other operation on the human teeth, or tissues of the mouth or jaws. However, it shall be unlawful for a person registered as a dental hygienist who is not also licensed to practice dentistry under the laws of this State to perform the operative procedure of dental hygiene except under the supervision of a licensed dentist and in one of the following places:

(a) The office of a licensed dentist.

(b) A state or municipal institution.

(c) A public school.

(d) A public clinic operating under the supervision of a hospital or of a state, municipal or other public institution.

The number of dental hygienists employed in the office of a licensed dentist or a public clinic operating under the supervision of a hospital or of a state, municipal or other public institution shall not exceed the number of licensed dentists practicing in such office, institution, school or public clinic. A dental hygienist employed in the office of a licensed dentist shall display his certificate of registration in a conspicuous place in such office. Added by act approved July 25, 1945. L. 1945, p. 986.

59d. *Registration of certificate with county clerk.*] § 4d. Any person registered as a dental hygienist shall cause his certificate of registration to be registered with the county clerk in each county in which he desires to be employed prior to beginning to perform the operative procedure of dental hygiene in such county and the county clerk shall charge therefor a fee of twenty-five cents. A failure to so register such certificate in any county shall constitute a forfeiture of such certificate and no certificate shall be restored except upon payment to the department of ten dollars. Added by act approved July 25, 1945. L. 1945, p. 986.

60. *Practice of dentistry—What constitutes—Prima facie evidence—Exemptions.*] § 5. A person practices dentistry, within the meaning of this Act:

(1) Who uses a dental degree, or designation, or card, device, directory, sign, or other media whereby he represents himself as being able to diagnose, treat, prescribe, or operate for any disease, pain deformity, deficiency, injury, or physical condition of the human tooth, teeth, alveolar process, gums or jaw; or

*(2) Who is a manager, proprietor, operator or conductor of a place where dental operations are performed; or

*(3) Who performs dental operations of any kind gratuitously, or for a fee, gift, compensation or reward, paid or to be paid, either to himself or to another person or agency; or

(4) Who uses a roentgen or X-ray machine for dental treatment, roentgenograms or for dental diagnostic purposes; or

(5) Who extracts a human tooth or teeth, or corrects or attempts to correct malpositions of the human teeth or jaws; or

(6) Who offers and undertakes, by any means or method, to diagnose, treat or remove stains or concretions (accretions) from human teeth or jaws; or

(7) Who uses or administers local or general anesthetics in the treatment of dental or oral diseases or in any preparation incident to a dental operation of any kind or character. This provision shall not apply to Dental Assistants administering anesthesia under the direction of a dentist licensed under this Act; or

**(8) Who takes impression of the human tooth, teeth, or jaws or performs any phase of any operation incident to the replacement of a part of a tooth, a tooth, teeth or associated tissues by means of a filling, a crown, a bridge, a denture or other appliance; or

**(9) Who furnishes, supplies, constructs, reproduces or repairs, or offers to furnish, supply, construct, reproduce or repair prosthetic dentures (some-

times known as "plates"), bridges or other substi tutes for natural teeth, to the user or prospective user thereof.

*(10) Who performs any clinical operation included in the curricula of recognized dental schools and colleges.

The fact that any person engages in or performs, or offers to engage in or perform, any of the practices, acts, or operations, set forth in this section, shall be prima facie evidence that such person is engaged in the practice of dentistry.

The following practices, acts, and operations, however, are exempt from the operation of this Act:

(a) The rendering of dental relief in emergency cases in the practice of his profession by a physician or surgeon, licensed as such and registered under the laws of this State, unless he undertakes to reproduce or reproduces lost parts of the human teeth in the mouth or to restore or replace lost or missing teeth in the mouth; or

(b) The practice of dentistry in the discharge of their official duties by dentists in the United States Army, the United States Navy, the United States Public Health Service, or the United States Veterans Bureau; or

(c) Dental Schools or colleges as now conducted and approved, or as may be approved, by the Department of Registration and Education, and the practice of dentistry by students in dental schools or colleges approved by the department, when acting under the direction and supervision of registered and licensed dentists acting as instructors; or

(d) The practice of dentistry by licensed dentists of other states or countries at meetings of the Illinois State Dental Society or component part thereof, alumni meetings of dental colleges, or any other like dental organizations, while appearing as clinicians; or

(e) The use of roentgen or other rays for making roentgenograms or similar records of dental or oral tissues provided, that such services shall not be offered to the public by any name whatsoever, as an

aid or inducement to secure dental patronage. As amended by act approved May 24, 1945. L. 1945, p. 977.

**60a. *Manufacture of dentures, bridges or replacements for licensed dentists—Advertisements.*] § 5a. Licensed dentists may employ or engage the services of any person, firm or corporation to construct or repair, extra-orally, prosthetic dentures, bridges, or other replacements for a part of a tooth, a tooth, or teeth. A person, firm or corporation, so employed or engaged, when constructing or repairing such dentures, bridges or replacements, exclusively, directly and solely for licensed members of the dental profession, and not for the public or any part thereof, shall not be deemed or considered to be practicing dentistry as defined in this Act. However, it is unlawful for persons, firms or corporations so employed or engaged, to advertise in any manner the appliances constructed or repaired, or the services rendered in the construction, repair or alteration thereof, except, that persons, firms or corporations so employed may announce in trade journals and professional publications which circulate among members of the dental profession, their names, the locations or places of their business, their office hours, telephone numbers, and the fact that they are engaged in the construction, reproduction or repair of such appliances, together with such display advertisements as disclose the character and application of their work, and persons, firms or corporations so employed or engaged may furnish to licensed dentists information regarding their products, materials, uses and prices therefor. Announcement may also be made by business card, in business and telephone directories, and by signs located upon the premises wherein the place of business is situated, but announcements made by business card or in business and telephone directories and signs shall not contain any amount as a price or fee for the services rendered, or to be rendered, or for any material or materials used or to be used, or any picture or other reproduction of a human head, mouth, denture or specimen of dental work or any other media calling attention of

the public to their business. The lettering on signs shall be no more than seven inches in height and no illuminated or glaring light signs shall be used. Added by act approved May 24, 1945. L. 1945, p. 977.

61. *Registration of license—Fee.*] § 6. Any person licensed to practice dentistry in this State by the Department of Registration and Education, as hereinbefore provided, shall, personally and within ninety days from date of issue, cause such license to be registered with the county clerks of such county or counties in which such person desires to engage in the practice of dentistry, and the county clerks of the several counties of this State shall charge for registering such license a fee of twenty-five cents (25¢) for each registration; and it is hereby provided, further, that every person who engages in the practice of dentistry in this State shall cause his or her license to be registered with the county clerk before beginning the practice of dentistry in said county, and to be, at all times, displayed in a conspicuous place, in his or her office where he or she shall practice such profession, and shall further, whenever requested, exhibit such license to any of the members of said department or its authorized agent, and it is further provided, that every licensee shall notify the department of the address or addresses, and of every change thereof, where the licensee shall engage in the practice of dentistry. [As amended by act approved July 7, 1933. L. 1933, p. 708.]

62. *Refusal, revocation or suspension of license—Grounds—Notice, hearing and continuance—Insanity—Resumption of practice or restoration.*] § 7. The department may refuse to issue the license provided for in this Act, or may revoke or suspend any license now in force or that shall be hereafter given, if issued to an individual who has, by false or fraudulent representations, obtained or sought to obtain practice, or, false or fraudulent representations, obtained or sought to obtain money or any other thing of value, or has practiced under a name other than his or her own, or for any other improper, unprofessional, or dishonor-

able conduct in the practice of dentistry, or is convicted of a felony, or when the licensee is found guilty of any of the following acts or offenses:

The Department of Registration and Education may refuse to issue or may suspend or may revoke any license now in force or that shall be hereafter given for any one or any combination of the following causes:

1. Fraud in procuring a license.

2. Habitual intoxication or addiction to the use of drugs.

3. Wilful or repeated violations of the rules of the Department of Public Health.

4. Acceptance of a fee for service as a witness, without the knowledge of the court, in addition to the fee allowed by the court.

5. Division of fees or agreeing to split or divide the fees received for dental services with any person for bringing or referring a patient, or assisting in the care or treatment of a patient, without the knowledge of said patient or his legal representative.

6. Employing, procuring, inducing, aiding or abetting a person not licensed or registered as a dentist to engage in the practice of dentistry; provided, that the person practiced upon shall not be deemed an accomplice, employer, procurer, inducer, aider, or abetter within the meaning of this Act.

7. Making any misrepresentations or false promises, directly or indirectly, to influence, persuade or induce dental patronage.

8. Professional connection or association with, or lending his name to another for the illegal practice of dentistry by another, or professional connection or association with any person, firm or corporation holding himself, themselves, or itself out in any manner contrary to this Act.

9. Obtaining or seeking to obtain practice, money, or any other thing of value by false of fraudulent representations.

10. Practicing under a name other than his own.

11. Improper, unprofessional, or dishonorable conduct.

12. Conviction of a felony.

12½. Permitting a dental hygienist under his supervision to perform any operation not authorized by the provisions of this Act.

12¾. Permitting more than one dental hygienist to be employed under his supervision except as authorized by this Act.

13. A violation of any provision of this Act.

14. Conviction of a violation of any provision of this Act.

15. Failing to become a citizen of the United States of America within a period of six years after becoming licensed to practice dentistry.

16. Taking impressions for or using the services of any person, firm or corporation violating any of the provisions of Section 5a.

17. Except as otherwise provided in Section 18b, advertising or soliciting by himself or through another by means of hand bills, posters, circulars, stereopticon slides, motion pictures, radio, newspapers or in any other manner for professional business.

The department may upon its own motion and shall upon the verified complaint in writing of any person setting forth facts which if proven would constitute grounds for refusal, suspension or revocation as hereinabove set forth, investigate the actions of any person holding or claiming to hold a license. The department shall, before refusing to issue, suspending or revoking any license, at least 10 days prior to the date set for the hearing, notify in writing the applicant or the holder of such license of any charges made and shall afford such accused person an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by delivery of the same personally to the accused person, or by mailing the same by registered mail to the place of business last theretofore specified by the accused person in his last notification to the department. At the time and place fixed in the notice, the examining

Committee designaated by the Director of Registration and Education, as provided in this Act, shall proceed to hearing of the charges and both the accused person and the complainant shall be accorded ample opportunity to present in person or by counsel, such statements, testimony, evidence and argument as may be pertinent to the charges or to any defense thereto. The committee may continue such hearing from time to time. If the committee is not sitting at the time and place fixed in the notice or at the time and place to which hearing has been continued, the department shall continue such hearing for a period not to exceed 30 days.

The entry of a decree by any court of competent jurisdiction establishing the insanity or mental illness of any person holding a license under this Act operates as a suspension of such license. Such person may resume his practice only upon a finding by the Examining Committee that the licensee has been declared restored to sanity by a court of competent jurisdiction and upon the Committee's recommendation to the Director that such licensee be permitted to resume his practice. As amended by act approved July 16, 1951. L. 1951, p. 1581.

62a. *Department may take testimony—Administer oaths.*] § 7-a. The Department shall have power to subpoena and bring before it any person in this State and to take testimony either orally or by deposition, or both, with the same fees and mileage and in the same manner as prescribed by law in judicial procedure in civil cases in courts of this State.

The Director, Assistant Director, Superintendent of Registration and any member of the Examining Committee shall each have power to administer oaths to witnesses at any hearing which the Department is authorized by law to conduct, and any other oaths required or authorized in any Act administered by the Department. [Added by act approved July 10, 1935. L. 1935, p. 965.]

62b. *Compelling testimony.*] § 7-b. Any circuit or superior court of any judge thereof, either in term

time or vacation, upon the application of the accused person or complainant or of the Department, may, by order duly entered, require the attendance of witnesses and the production of relevant books and papers before the Department in any hearing relative to the application for or refusal, suspension or revocation of a license, and the court or judge may compel obedience to its or his order by proceedings for contempt. As amended by act approved May 24, 1945. L. 1945 p. 977.

62c. *Record of proceedings.*] § 7-c. The Department, at its expense, shall provide a stenographer to take down the testimony and preserve a record of all proceedings at the hearing of any case wherein a license is refused, revoked or suspended. The notice of hearing, complaint and all other documents in the nature of pleadings and written motions filed in the proceedings, the transcript of testimony, the report of the committee and the orders of the Department shall be the record of such proceedings. The Department shall furnish a transcript of such record to any person interested in such hearing upon payment therefor of twenty-five cents per one hundred words for each original transcript and eight cents per one hundred words for each carbon copy thereof ordered with the original: Provided, that the charge for any part of such transcript ordered and paid for previous to the writing of the original record thereof shall be eight cents per hundred words. As amended by act approved May 24, 1945. L. 1945, p. 977.

62d. *Report of committee—Rehearing.*] § 7-d. The committee shall present to the director its written report of its findings and recommendations. A copy of such report shall be served upon the accused person, either personally or by registered mail as provided in this Act for the service of the citation. Within twenty (20) days after such service said accused person may present to the Department his motion in writing for a rehearing, which written motion shall specify the particular grounds therefor. If said accused person shall order and pay for a transcript of

the record as provided in this section, the time elapsing thereafter and before such transcript is ready for delivery to him shall not be counted as part of such twenty days.

Whenever the Director is satisfied that substantial justice has not been done, he may order a rehearing by the same or another special committee. At the expiration of the time specified for filing a motion for a rehearing the Director shall have the right to take the action recommended by the committee. Upon the suspension or revocation of his license, the licensee shall be required to surrender his license to the department, and upon his failure or refusal so to do, the department shall have the right to seize the same. As amended by act approved May 24, 1945. L. 1945, p. 977.

62c. *Restoration of license.*] § 7-c. At any time after the suspension or revocation of any license, the department may restore it to the accused person without examination, upon the written recommendation of the examining committee. As amended by act approved May 24, 1945. L. 1945, p. 977.

62f. *Review of order.*] § 7-f. All final administrative decisions of the Department hereunder shall be subject to judicial review pursuant to the provisions of the "Administrative Review Act", approved May 8, 1945, and all amendments and modifications thereof, and the rules adopted pursuant thereto. The term "administrative decision" is defined as in Section 1 of the "Administrative Review Act."

Such proceedings for judicial review shall be commenced in the Circuit or Superior Court of the county in which the party applying for review resides; provided, that if such party is not a resident of this State, the venue shall be in Sangamon County.

The Department shall not be required to certify any record or file any answer or otherwise appear hereunder unless the party filing the complaint deposits with the clerk of the court the sum of five cents per hundred words representing costs of such certification. Failure on the part of the plaintiff to make such de-

posit shall be grounds for dismissal of the action. As amended by act approved Aug. 1, 1949. L. 1949, p. 1084.

62g. *Order prima facie evidence.*] § 7-g. An order of revocation or suspension or a certified copy thereof, over the seal of the department and purporting to be signed by the Director shall hep rima facie proof that

(1) Such signature is the genuine signature of the Director.

(2) That such Director is duly appointed and qualified.

(3) That the Committee and the members thereof are qualified to act.

Such proof may be rebutted. As amended by act approved Aug. 1, 1949. L. 1949, p. 1084.

62h. *Appeals to Supreme Court.*] § 7-h. Appeals from all final orders and judgments entered by a circuit or superior court in review of a final administrative decision of the department may be taken directly to the Supreme Court by either party to the action and shall be governed by the rules applying to other civil cases appealed to said Supreme Court. As amended by act approved Aug. 1, 1949. L. 1949, p. 1084.

62i. § 7-i. Repealed by act approved Aug. 1, 1949. L. 1949, p. 1084.

63. *Failure to register license.*] § 8. Any failure, neglect or refusal on the part of any person obtaining a license to practice dentistry from the said department, to register such license with the county clerk of some county in this State, within ninety days from the date of issue of the same, or to notify the department of any change of address within ninety days thereof, as above directed, shall work a forfeiture of such license, and no license, when once forfeited, shall be restored, except upon payment to the said department of the sum of fifteen dollars ($15.00) for such neglect failure or refusal to register such license, and the surrender of forfeited license. [As amended by act approved July 7, 1933. L. 1933, p. 708.]

64. *Examination fee—License fee—Compensation of members—Report.*] § 9. In order to provide the means for carrying out and enforcing the provisions of this Act, the department shall charge each person applying to it for examination for a license to practice dentistry or dental surgery in this State, an examination fee of twenty dollars ($20.00) and in addition thereto a license fee of five dollars ($5.00) for every license or duplicate license issued by the department, and out of the funds coming into possession of the department under the provisions of this Act the members of the dental committee shall each receive as compensation the sum of ten dollars ($10.00) for each day actually engaged in the duties of the office, and all legitimate and necessary expense incurred in attending the meetings of the said dental committee. [As amended by act approved July 10, 1935. L. 1935, p. 965.]

65. *Filing license or diploma of another.*] § 10. Any person filing or attempting to file as his own the diploma or license of another, or a forged affidavit of identification or qualification, shall be deemed guilty of a felony, and upon conviction thereof, shall be subject to such fine and imprisonement as is made and provided by the statutes of this state for the crime of forgery.

66. *License issued upon certificate of foreign board—Fee—Practical examination—Proviso.*] § 11. Any dentist who has been lawfully licensed to practice in another State or territory which has and maintains a standard for the practice of dentistry or dental surgery equal to that now maintained in this State, and who has been lawfully and continuously engaged in the practice of dentistry for five years or more immediately before filing his application to practice in this State and who shall deposit in person with the department a duly attesed certificate from the Examining Board of the State or territory in which he is licensed or registered, certifying to the fact of his licensing or registration and of his being a person of good moral character and of professional attain-

ments, may, upon the payment of a fee of twenty-five dollars $25.00) and after satisfactory practical examination demonstrating his proficiency, be granted a license to practice dentistry in this State, without being required to take an examination in theory. Provided, however, that no license shall be issued to any such applicant, unless the State or territory from which such certificate has been granted to such applicant shall have extended a like privilege to engage in the practice of dentistry within its own borders to dentists heretofore and hereafter licensed by this State, and removing to such other State; and provided further, that the department shall have power to enter into reciprocal relations with similar departments of other States whose laws are practically identical with the provisions oft his Act.

For the purposes of this section, in computing the five-year period of practice in another State or territory any person who left the practice of dentistry to enter the military service and who practiced dentistry while in the military service may count as a part of such period the time spent by him in such service. As amended by act approved May 24, 1945. L. 1945, p. 977.

67. *Removal to another state, etc.*] § 12. Any one who is a legal and competent practitioner of dentistry or dental surgery in the State of Illinois, and of good moral character and known to the department as such, who desires to change his or her residence to another State or territory, shall, upon application to the department receive a certificate from the department which shall attest the facts above mentioned and giving the date upon which he was registered and licensed. [As amended by act approved July 10, 1935. L. 1935, p. 965.]

68. *Fee for issuing certificate.*] § 13. The fee for issuing a certificate to a legal practitioner of this state, under Section 12 of this act, shall be five dollars ($5.00), and in each case the fee shall be paid before the certificate shall be issued. [As amended by act aproved June 25, 1915. L. 1915, p. 497.]

[§ 14 repealed. L. 1919, p. 646.]

69. *Exemption from jury service.*] § 15. That all dentists or dental surgeons now legal practitioners of dentistry or dental surgery in this state, or those who may hereafter become such, shall be exempt from service as jurors in any of the courts of this state.

70. *Penalty for unlawful practice.*] § 16. Any person who shall practice or offer to practice dentistry in this State without being licensed for that purpose, or whose license has been suspended or revoked, or who violates any of the provisions of this Act, for which no specific penalty has been provided herein, shall be subject to prosecution before any court of competent jurisdiction, and shall, upon conviction, be fined by any sum not less than two hundred dollars ($200.00) nor more than one thousand dollars ($1,000.00), or imprisoned in the county jail for not less than one month nor more than one year or both so fined and imprisoned in the discretion of the court. As amended by act approved May 24, 1945. L. 1945, p. 977.

71. § 17. Repealed. Act approved July 10, 1935. L. 1935 p. 965.

*71a. *Unlawful practice a public nuisance—Injunction.*] § 17a. The practice of dentistry by any person who has not been duly licensed so to practice or whose license has been suspended or revoked, or the doing, committing or continuing of any of the acts enumerated in Sections 5a, 18, 18a and 18b by any person or persons, whether licensed dentists or not, is hereby declared to be inimical to public health and welfare and to constitute a public nuisance. The Attorney General for the State of Illinois, the State's Attorney for any county in the State, or any resident citizen may maintain an action in the name of the people of the State of Illinois to perpetually enjoin any person from so unlawfully practicing dentistry and from the doing, committing or continuing of such unlawful act. This proceeding shall be in addition to and not in lieu of criminal prosecutions or proceedings to revoke or suspend licenses as authorized by this act. Added by act approved May 24, 1945. L. 1945, p. 977.

71b. *Performing dental hygiene without certificate or unlawfully.*] § 17b. Any persons who perform or offers to perform the operative procedure of dental hygiene in this State without a certificate of registration or who, having a certificate of registration, performs the operative procedure of dental hygiene in a manner or place not permitted by the provisions of this Act shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00). Added by act approved July 25, 1945. L. 1945, p. 986.

•72. *Practice under name of company, etc.*] § 18. It shall be unlawful for any person or persons to practice dentistry under the name of a corporation, company, association or trade name; or under any name except his or her own proper name, which shall be the name used in his or her license as issued by the Department of Registration and Education; or to conduct, maintain, operate, own or provide a dental office in the State of Illinois, either directly or indirectly, or by his or her agents or employees; or for such person or persons to hold themselves out to the public, directly or indirectly, or through agents or employees as soliciting patronage or as being qualified to practice dentistry in this State; or to operate, manage or be employed in any room, rooms or office where dental service is rendered or contracted for, under the name of a corporation, company, association or trade name; provided, however, that any person or persons now practicing dentistry under any corporation, company, association or trade name may use his, her or their personal names as successor to the name now used for a period of two years from the time of the passage oft his Act, at the expiration of which time the use of all corporation, company, association or trade names shall be discontinued.

Any manager, proprietor, partnership, or association owning, running, operating or controlling any room or rooms, office or dental parlors, where dental work is done, provided or contracted for, who shall employ, keep or retain any unlicensed person or dentist as an operator; or

Who shall fail, within ten days after demand made by the Department of Registration and Education, in writing sent by registered mail, addressed to any such manager, proprietor, partnership or association at said room, office or dental parlor, to furnish to said department the names and addresses of all persons practicing or assisting in the practice of dentistry in his place of business or under his control, together with a sworn statement showing by what license or authority said persons are practicing dentistry, shall be guilty of a misdemeanor and subject to the penalties provided for in this Act: Provided, however, that such sworn statement shall not be used as evidence in any subsequent court proceedings. [As amended by act approved July 7, 1933. L. 1933, p. 708.]

*72a. *Practice by corporation.*] § 18a. No corporation shall practice dentistry or engage therein, or hold itself out as being entitled to practice dentistry, or furnish dental services or dentists, or advertise under or assume the title of dentist or dental surgeon or equivalent title, or furnish dental advice for any compensation, or advertise or hold itself out with any other person or alone, that it has or owns a dental office or can furnish dental service, dentists or dental surgeons, or solicit through itself, or its agents, officers, employees, directors or trustees, dental patronage for any dentist or dental surgeon employed by any corporation: Provided, that nothing contained in this Act shall prohibit a corporation from employing a dentist or dentists to render dental services to its employees, provided, that such dental services shall be rendered at no cost or charge to the employees; nor shall it aply to corporations or associations in which the dental services were originated and are being conducted upon a purely charitable basis for the worthy poor, nor shall it apply to corporations or associations furnishing information or clerical services which can be furnished by persons not licensed to practice dentistry, to any person lawfully engaged in the practice of dentistry, when such dentist assumes full responsibility for such information and services. Any cor-

poration violating the provisions of this section is guilty of a misdemeanor, and shall be fined not less than two hundred dollars ($200) or more than five hundred dollars ($500) for each offense, and each day that this Act is violated shall be considered a separate offense. [Added by act approved July 7, 1933. L. 1933, p. 708.]

*72b. *Advertising regulated—Penalty.*] §18b. It shall be unlawful for any person, firm or corporation to publish, directly or indirectly, or circulate any fraudulent, false or misleading statements as to the skill or method of practice of any person or operator; or in any way to advertise to practice dentistry without causing pain; or to advertise in any manner with a view of deceiving the public, or in any way that will tend to deceive or defraud the public; or to claim superiority over neighboring dental practitioners; or to publish reports of cases or certificates of same in any public advertising media; or to advertise as using any anesthetic, drug, formula, material, medicine, method or system, which is either falsely advertised or misnamed; or to advertise free dental services or examinations as an inducement to secure dental patronage; or to advertise any amount as a price or fee for the service or services of any person engaged as principal or agent in the practice of dentistry, or for any material or materials whatsoever used or to be used; or to employ "cappers" or "steerers" to obtain patronage; or to exhibit or use specimens of dental work, posters, or any other media calling attention of the public to any person engaged in the practice of dentistry; or to give a public demonstration of skill or methods of practicing dentistry upon or along the streets or highways, or any place other than his office where he is known to be regularly engaged in the practice of his profession, and any person committing an offense against any of the provisions of this section, shall, upon conviction, be subjected to such penalties as are provided in this Act; provided, that any person licensed under this Act may list his name, title, specialty, address and telephone number in pro-

fessional and telephone directories: or announce by way of professional card containing only the name, title, degree, office location, office hours, phone, number, and residence address and phone number, if desired, and if he limits his practice to a specialty, he may announce it, but such card shall not be greater in size than three and one-half (3½) inches by two (2) inches; and such information may be inserted in public print when not more than one column in width and two (2) inches in depth or announce his change of place of business, absence from, or return to business in the same manner; or issue appointment cards to his patients, when the information thereon is limited to matter pertaining to the time and place of appointment and that permitted on the professional card; or display the name of the licensee, on the premises where engaged in the profession, upon the windows therof and by a door plate or name or office directory when the information is limited to that of the professional card. Provided, that the lettering on any sign shall be no more than seven (7) inches in height and that no illuminated or glaring light signs shall be used. As amended by act approved May 24, 1945. L. 1945, p. 977.

72c. *Payment of fines and penalties.*] § 18-c. All fines and penalties provided for in this Act shall inure and be paid to the Department of Registration and Education. [Added by act approved July 10, 1935. L. 1935, p. 965.]

[§ 19. Repealed.]

72d. *Acting as dental hygienist without certificate.*] § 20. It is unlawful for any person other than a licensed dentist to perform the operative procedure of dental hygiene, as a registered dental hygienist, without a certificate of registration as a registered dental hygienist, issued by the Department of Registration and Education. Added by act approved July 25, 1945. L. 1945, p. 986.

72e. *Functions, powers and duties of department concerning dental hygienists.*] § 21. The Depart-

ment of Registration and Education shall exercise, but subject to the provisions of the Act, the following functions, powers and duties:

1. Conduct examinations to ascertain the qualifications and fitness of applicants for certificates of registrations as dental hygienists.

2. Prescribes rules and regulations for a method of examinations of candidates.

3. Prescribe rules and regulations defining what shall constitute a school, college, or university or department of a university, or other institution, reputable and in good standing and to determine the reputability and good standing of a school, college or other institution reputable and in good standing by reference to a compliance with such rules and regulations; provided that no school, college or university, or department of a university or other institution that refuses admittance to applicants, solely on account of race, color or creed shall be considered reputable and in good standing.

4. Establish a standard of preliminary education deemed requisite to admission to a school, college or university, and to require satisfactory proof of the enforcement of such standard by said school, colleges and universities.

5. Conduct hearings on proceedings to revoke or refuse renewal of certificates of persons applying for registration or registered under the provisions of this Act and to revoke or refuse to renew such certificates.

6. Formulate rules and regulations when required in any Act to be administered.

None of the foregoing functions, powers, or duties enumerated shall be exercised by the Department of Registration and Education except upon the action and report in writing of the Examining Committee as provided for in Section 3a of this Act. Added by act approved July 25, 1945. L. 1945, p. 986.

72f. *Application for certificate of registration as dental hygienist.*] § 22. Every person who desires to obtain a certificate of registration as a dental hygienist shall apply to the Department of Registra-

tion and Education, in writing, upon blanks prepared and furnished by the Department of Registration and Education. Each application shall conttain proof of the particular qualifications required of the applicant, shall be verified by the applicant, under oath, and shall be accompanied by the examination fee of $15.00. Added by act approved July 25, 1945. L. 1945, p. 986.

72g. *Examination of applicants.*] §23. The Department of Registration and Education shall hold examinations of applicants for certificates of registration as dental hygienists at such times and places as it may determine.

The examination of applicants for certitficates of registration as registered dental hygienists may include both practical demonstrations and written and oral tests and shall embrace the subjects usually taught in schools of dental hygiene, approved by the Department of Registration and Education. Added by act approved July 25, 1945. L. 1945, p. 986.

72h. *Refusal, suspension or revocation of certificate.*] § 24. The Deparment of Registration and Education may refuse to issue or may suspend or revoke any certificate of registration as a dental hygienist for any one or any combination of the following causes:

1. Fraud in procuring certificate.

2. Performing any operation not authorized by the provisions of this Act.

3. Practicing dental hygiene other than under the supervision of a licensed dentist as provided by this Act.

The provisions of this Act relating to proceedings for the suspension and revocation of a license to practice dentistry shall apply to proceedings for the suspension or revocation of a certificate of registration as a dental hygienist.

The Department of Registration and Education may either refuse to issue, or may refuse to renew, or may suspend, or may revoke, any certificate of registration, for any, or any combination of the following causes:

(a) The wilful violation of, or the wilful procuring of, or knowingly assisting in the violation of, any Act which is now or which hereafter may be in force in this State relating to the use of habit forming drugs;

(b) The obtaining of, or an attempt to obtain a certificate of registration, or practice in the profession, or money, or any other thing of value by fraudulent representation;

(c) Gross negligence in performing the operative procedure of dental hygiene;

(d) Continued employment by a person knowingly having an infectious, communicable, or contagious disease;

(e) Habitual drunkenness, or habitual addiction to the use of morphine, cocaine, or other habit forming drugs. Added by act approved July 25, 1945. L. 1945, p. 986.

THE OPINION BELOW.

Opinion of the Supreme Court of Illinois, No. 33718, *The People ex rel. Chicago Dental Society, et al. Appellees* v. *A A A Dental Laboratories, Inc.*—(*A-1 Dental Plate Laboratory Company, Inc., et al., Appellants.*)

March 22, 1956.

MR. JUSTICE SCHAEFFER delivered the opinion of the court:

In this case those provisions of the Dental Practice Act which relate to persons who manufacture and repair substitutes for natural teeth are challenged upon many constitutional grounds.

The action was instituted in the superior court of Cook County on the relation of the Chicago Dental Society and a number of its officers, directors and members against 36 persons, groups of persons or corporations engaged in the dental laboratory business in Chicago. The amended complaint charged the defendants with practicing dentistry without licenses, soliciting dental patronage from the public by ad-

vertising and practicing dentistry under the name of a corporation, company, association or trade name, all in violation of the Dental Practice Act. The relief sought was a permanent injunction restraining defendants from violating the act.

The statute provides a comprehensive scheme of regulation of the practice of dentistry. The controversy centers primarily upon section 5a and paragraphs (8) and (9) of section 5. Section 5 provides that a person practices dentistry "(8) Who takes impressions of the human tooth, teeth, or jaws or performs any phase of any operation incident to the replacement of a part of a tooth, a tooth, teeth or associated tissues by means of a filling, a crown, a bridge, a denture or other appliance; or

"(9) Who furnishes, supplies, constructs, reproduces or repairs, or offers to furnish, supply, construct, reproduce or repair prosthetic dentures (sometimes known as 'plates,') bridges or other substitutes for natural teeth, to the user or prospective user thereof." Ill. Rev. Stat. 1955, chap. 91, par. 60.

The portion of section 5a which is most sharply disputed provides: "Licensed dentists may employ or engage the services of any person, firm or corporation to construct or repair, extra-orally prosthetic dentures, bridges or other replacements for a part of a tooth, a tooth, or teeth. A person, firm or corporation so employed or engaged, when constructing or repairing such dentures, bridges or replacements, exclusively, directly and solely for licensed members of the dental profession, and not for the public or any part thereof, shall not be deemed or considered to be practicing dentistry as defined in this Act." The remainder of the section restricts the advertising activities of persons, firms and corporations so engaged. Ill. Rev. Stat. 1955, chap. 91, par. 60a.

The effect of these provisions is to make it unlawful for dental laboratory technicians to make impressions for false teeth, or to make or repair them, except when engaged or employed to do so by a licensed dentist.

By motions to dismiss the amended complaint, certain defendants attacked the Dental Practice Act on constitutional grounds. An order was entered on the motions to dismiss which found section 5a unconstitutional to the extent that it prohibited defendants from selling prosthetic dentures (plates), bridges, or other substitutes for natural teeth directly to the user or prospective user, where the patient employs a licensed dentist who takes the necessary impressions, gives an order or prescription therefor, and makes the fitting thereof in the oral cavity.

After defendants had answered, the cause was referred to a master in chancery who conducted extended hearings. On plaintiffs' motion the complaint was dismissed as to seven defendants or groups of defendants. Decrees granting injunctive relief were entered by consent against two defendants, and a default decree was entered against one. In accordance with the master's recommendation, the decree found that all but four of the remaining defendants were practicing dentistry without licenses and permanently enjoined them from the practices described in the decree. In accordance with the ruling made on the motions to dismiss, the decree provided that defendants might sell substitutes for natural teeth directly to users or prospective users when a licensed dentist takes the necessary impressions, gives an order or prescription therefor, and makes the fitting thereof in the oral cavity. The plaintiffis have cross-apealed from those portions of the decree which reect this ruling. As to four defendants, the decree found the evidence insufficient to show that they constructed or repaired dentures, bridges or other replacements for human teeth except directly and solely for licensed dentists, and that their advertising did not violate any of the provisions of the Dental Practice Act. The complaint was dismissed as to them. One defendant died during the pendency of the litigation, and the complaint was dismissed as to him. Twelve defendants against whom decrees were entered prosecute this appeal; plaintiffs cross-appeal, and the ap-

pellants and the four defendants as to whom relief was denied are cross appellees.

Defendants' principal contention is that the statute deprives them of due process of law under the State and Federal constitutions. Voluminous testimony establishes beyond doubt that the furnishing of artificial dentures is intimately related to the general health of the patient, and that the mechanical work of making the denture is but a small part of the total undertaking, which always requires biological, physiological and pathological knowledge, and sometimes surgical skill. This relationship justifies legislative regulation of dentistry, including prosthetic dentistry (*Lasdon* v. *Hallihan*, 377 Ill. 187), and indeed the defendants concede in their reply brief that the legislature can regulate the activities of dental technicians.

It is argued, however, that although the general subject is within the legislative competence, the particular regulation is unreasonable, arbitrary and unrelated to concerns of public health. It is pointed out that under the act no qualifications are established for the laboratory technicians who make dental plates. Any person may do so, and the only qualification, it is said, is that the work must be done through the brokerage of a dentist. It is agreed that the dentist is thus given what amounts to governmental control over the laboratory technician, which may be exercised arbitrarily since no standards are prescribed. The technician is afforded no protection; his success is dependent upon the favor of the dentist.

We mphasize at the outset that decision does not depend on our appraisal of the wisdom of the enactment, and that "it is for the legislature, not the courts, to balance the advantages and disadvantages of the new requirement." (*Williamson* v. *Lee Optical of Oklahoma, Inc.* 348 U. S. 483, 487.) That we mignt regard certain provisions as unnecessary is immaterial if they can be said to be reasonably related to a legitimate legislative concern.

The aim of the statute is to restrict the practice of dentistry to licensed dentists with the exception that extra-oral work on dental appliances may be done by nondentists who are engaged or employed by dentists to do it. To that end, dental technicians are prohibited to do work on dental appliances directly for the public. The evidence establishes that the knowledge and skill of the dentist is necessary in the diagnosis of the case, the taking of impressions, the issuance of instructions to the laboratory and the testing, fitting and adjustment of a prosthetic denture. It is argued, however, that the limit of legislative power is reached when the statute requires that the impression be made upon the order of a dentist who also fits the appliance into the oral cavity, and that the technician cannot be probibited from selling the denture directly to the patient. This was the view taken by the trial court upon the motion to dismiss, and as has been stated, the plaintiffs have cross-appealed from those portions of the decree which reflect that ruling.

In our opinion the power of the legislature is not exhausted when it has provided that there shall be professional supervision at the inception and the conclusion of what is essentially a single process. It may, if it sees fit, go further and insure that responsibility to the patient shall not be fragmented, and it may focus that responsibility upon a member of the profession which it regulates. By that means, compliance with the requiremnt that the dentist shall fit the appliance in place and make the necessary adjustments may be enhanced, protection against inferior workmanship and materials and exorbitant prices may be ensured, and the dentist can be certain that the work for his patients is done by those in whose integrity, competence and skill he has confidence.

Advertising by dentists is severely restricted. The record in this case shows that many of the defendant technicians have by persistent and blatant advertising sought to deal directly with the public, and that

control of dental patronage has thus come into the hands of laboratory technicians who have directed it to such dentists as they saw fit. Prohibition of direct dealing between the makers of dentures and the public may thus be thought desirable to avoid the danger that the profession of dentistry may become "subservient to the business of those engaged in the making of plates." *Lasdon* v. *Hallihan*, 377 Ill. 187, 195.

Lasdon v. *Hallihan* is decisive of the central issue in this case and of some of the peripheral issues as well. The statute which was before the court in that case provided that dental plates might, "under certain specified conditions, be made by one who is not a licensed and registered dentist. Such conditions are (a) the impression from which the plate is to be made must be taken by a licensed dentist; (b) the person engaged in the making of such appliances shall not offer to sell them or the services rendered in the construction of them to the public and (c) the placing and adjustment of the plates in the oral cavity shall be performed by a licensed dentist." (377 Ill. at 190.) The statute was sustained against attack upon the constitutional grounds here urged.

The defendants, however, urge that the *Lasdon case* was in effect overruled by our decisions in *People* v. *Brown*, 407 Ill. 565 and *Schroeder* v. *Binks*, 415 Ill. 192, or alternatively that the *Lasdon case* was wrongly decided. In the *Brown case* certain sections of the Plumbing License Law of 1935 were held unconstitutional. That act classified plumbers as master plumbers, journeymen plumbers and plumber's apprentices, and required a license for each classification. A journeyman plumber could carry on his work only under the supervision of a licensed master plumber. An apprentice could learn the plumbing trade only as an employee of a licensed master plumber. A journeyman plumber seeking a master plumber's license was required to show that he had been actually engaged by a master plumber for a prescribed period. An apprentice applying for a journeyman plumber's license was required to show that he was to be imme-

diately employed by a master plumber. The court held that the act granted master plumbers a monopoly, and that it constituted an unwarranted exercise of the police power.

The Plumbing License Law of 1951, adjudged unconstitutional in *Schroeder* v. *Binks*, 415 Ill. 192, was vulnerable in large measure to the vices which infected the earlier Plumbing License Law. The provision of the former statute requiring journeymen and apprentice plumbers to be employees of master plumbers was eliminated and a provision substituted requiring supervision by master plumbers of all plumbing work done by journeymen or apprentices. The substitution did not meet the prior objection. As we observed (415 Ill. at p. 197): "In all of this there is no suggestion that protection of the public health is enhanced by the requirement that all of the work of a licensed journeyman must be supervised by a master. Rather it appears that the roots of the requirement reach back to an economic pattern which is anachronistic today." In neither of the two cases was any attempt made to show the existence of economic evils which might have been thought to justify legislative action, and none were apparent.

There is in the present case no prescribed economic hierarchy, with access to each successive stage controlled by the dominant interest. Any person is free to become a dental laboratory technician. The statute places no artificial restraint upon him. His success is determined by the normal process of competition. By the statute his direct dealings are limited to those who are peculiarly fitted by education and training to judge the quality of his work. But in this restriction there may be protection for members of the public who lack the capacity to make an informed appraisal of the quality and value of the product, and protection as well for the economic independence of a profession serving public health needs. The General Assembly has regarded the limitation in the statute as necessary to protect the public and the dental profession, and we are unable to say that

its determination is entirely without foundation. We adhere to our decision in *Lasdon* v. *Hallihan*, and we are not persuaded to the contrary by *Berry* v. *Summers*, 76 Ida. 374, 283 P. 2d 1093, in which statutory provisions similar to those here involved were held invalid.

Defendants also attack the validity of sections 5(a) and 18(b) of the act (Ill. Rev. Stat. 1955, chap. 91, pars. 60(a), 72(b),) which limit the type of advertising which may be done by those who are subject to the act. The objection is not directed to any of the specific restrictions which the act contains. Rather it appears to be based upon the assumption that the General Assembly is without power to restrict in any way the advertising of dental laboratory technicians. The contrary has been squarely held. *Lasdon* v. *Hallihan*, 377 Ill. 187, 194; *Winberry* v. *Hallihan*, 361 Ill. 121; see also *Perlow* v. *Board of Dental Examiners*,—Mass.—, 127 N. E. 2d 306; cf. *Williamson* v. *Lee Optical of Oklahoma, Inc.*, 348 U. S. 483; *Klein* v. *Department of Registration and Education*, 412 Ill. 75; *Roberts Optical Co.* v. *Department of Registration and Education*, 4 Ill. 2d 290.

Defendants further contend that subsections (8) and (9) of section 5 and section 5a violate section 13 of article IV of our constitution in that they contain matter not within the title of the Dental Practice Act, "An Act to regulate the practice of dental surgery and dentistry in the State of Illinois." Section 13 of article IV provides that no act shall embrace more than one subject, which shall be expressed in the title. The contention rests upon the argument that the making of false teeth is not the practice of dentistry, and that, not being "dental surgery" or "dentistry," provisions relating to this activity cannot properly be placed in the Dental Practice Act. The precise contention has been decided adversely to dedefendants. *Lasdon* v. *Hallihan*, 377 Ill. 187, 196.

Defendants make the additional contention that section 5(9) of the Dental Practice Act is special legislation of the character prohibited by section 22 of

article IV of our constitution and the equal protection clause of the fourteenth amendment to the Federal constitution. This contention was also rejected in *Lasdon* v. *Hallihan,* 377 Ill. 187.

By their cross appeal, plaintiffs contend that, irrespective of the extent to which four of the defendants may have dealt with licensed dentists, the decree is erroneous in not enjoining them from advertising in telephone directories, by window posters, and by public display of specimen dentures, and from dealing directly with the public. The decree found as to Martin Dorner, doing business as Capitol Dental Laboratories, and also as Dorner Dental Laboratories, that he had carried one-quarter page display advertising in the Chicago Red Book since March of 1950, which included the following phrases: "New Tru-Fit Transparent Dental Plates—Emergency Repairs—Some Less Than 30 Minutes—Newest Types—Full or Partial Individualized Dentures Made By Master Technicians—All Plates Fitted With Gold Pin Teeth—26 Years' Experience to the Dental Profession." A photograph shows that Dorner exhibited specimen dentures in the sidewalk show window of his laboratory. He also advertised in religious publications and in a theater. All of these forms of advertising are clearly prohibited by section 5(a), with the exception of the use of the telephone directory. As to that, the statute permits an announcement "by business card." The master found that Dorner came within the purview of section 5a but that he was not violating that section's provisions relating to advertising or announcements. This conclusion was predicated upon the interpretation that section 5a contains "no limitation on the size of 'announcements' which can be made in a telephone directory." We disagree; the one-quarter page display advertisements referred to in the master's report and the decree amount to a "media calling attention of the public to their business," which is prohibited, rather than a "business announcement" which is permitted. This conclusion applies with like force to defendant's advertising in church

publications and in the theater and to his display of specimen dentures in his shop window. While there is no evidence showing that this defendant dealt directly with the public, his advertising activities clearly show a purpose to do so, and in our opinion justify a decree restraining him from dealing directly with the public. The decree, so far as it relates to Dorner's advertising, and in so far as it fails to enjoin him from dealing directly with the public, is erroneous.

For the reasons stated concerning Martin Dorner, the decree is in part erroneous as its affects (1) Carl F. Dorner, doing business as Ogden Dental Laboratory, (2) Thomas P. Shanahan, doing business as Shanahan Dental Laboratories and West End Dental Laboratories, and (3) Comfort Plate Dental Laboratory.

In 19 paragraphs the injunctional orders contain the following exception: "except that defendant may sell said substitutes for natural teeth to the user or prospective user thereof where the user or prospective user thereof employs a licensed dentist who takes the necessary impressions therefor, and who gives an order or prescription therefor, and who makes the fitting thereof in the oral cavity." These parts of the decree adhere to the order entered on May 1, 1952, adjudging section 5a of the Dental Practice Act unconstitutional in part. For the reasons which have been stated, these portions of the decree are erroneous.

It becomes unnecessary to consider plaintiffs' contention upon their cross appeal that the trial court erred in refusing to enforce *subpoenas duces tecum* to compel three of the defendants to produce books and records for examination before the master in chancery. The decree against two was substantially the same as the decree against the other defendants who are appellants here, and what has been said is applicable to these defendants. The third of these defendants is Carl F. Dorner, doing business as Ogden Dental Laboratory, whose situation has already been discussed.

The decree of the superior court of Cook County is business as Capitol Dental Laboratories and Dorner reversed with respect to (1) Martin Dorner, doing Dental Laboratories, (2) Carl F. Dorner, doing business as Ogden Dental Laboratory, (3) Thomas P. Shanahan, doing business as Shanahan Dental Laboratories and West End Dental Laboratories, and (4) Comfort Plate Dental Laboratory, and the cause is remanded as to them, with directions to grant the injunctive relief sought. The decree is also reversed to the extent that it provides that any defendant may sell substitutes for natural teeth to the user or prospective user where he employs a licensed dentist who takes the necessary impressions, gives an order or prescription therefor, and makes the fitting thereof in the oral cavity. In all other respects, the decree is affirmed. The cause is remanded, with directions to proceed in conformity with this opinion.

Affirmed in part, and reversed in part and remanded, with directions.

JUDGMENT OF THE SUPREME COURT OF ILLINOIS.

And now, on this day, this cause having been argued by counsel, and the Court having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises, are of the opinion that in the part of the record and proceedings aforesaid and in the rendition of the decree of the Superior Court of Cook County with respect to (1) Martin Dorner, doing business as Capitol Dental Laboratories and Dorner Dental Laboratories, (2) Carl F. Dorner, doing business as Ogden Dental Laboratory, (3) Thomas P. Shanahan, doing business as Shanahan Dental Laboratories and West End Dental Laboratories, and (4) Comfort Plate Dental Laboratory, and to the extent that it provides that any defendant may sell substitutes for natural teeth to the user or prospective

user where he employs a licensed dentist who takes the necessary impressions, gives an order or prescription therefor, and makes the fitting thereof in the oral cavity, there is manifest error.

THEREFORE, it is considered by the Court that for that error and others in the record and proceedings aforesaid that part of the decree of the Superior Court of Cook County with respect to (1) Martin Dorner, doing business as Capitol Dental Laboratories and Dorner Dental Laboratories, (2) Carl F. Dorner, doing business as Ogden Dental Laboratory, (3) Thomas P. Shanahan, doing business as Shanahan Dental Laboratories and West End Dental Laboratories, and (4) Comfort Plate Dental Laboratory, in this behalf rendered, Be Reversed, Annulled, Set Aside And Wholly For Nothing Esteemed, and this cause be remanded to the Superior Court of Cook County as to them with directions to grant the injunctive relief sought.

It is further considered by the Court that for that error and others in the record and proceedings aforesaid that part of the decree of the Superior Court of Cook County to the extent that provides that any defendant may sell substitutes for natural teeth to the user or prospective user where he employs a licensed dentist who takes the necessary impressions, gives an order or prescription therefor, and makes the fitting thereof in the oral cavity, in this behalf rendered, Be Reversed, Annulled, Set Aside And Wholly For Nothing Esteemed, and this cause be remanded to the Superior Court of Cook County with further directions to proceed in conformity with the views expressed in the opinion attached to this mandate.

And it is further considered by the Court that neither in the record and proceedings aforesaid, nor in the rendition of all other parts of the decree of the Superior Court of Cook County is there anything erroneous, vicious or defective, and in these parts of the record there is no error.

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1956

No. 311

A-1 DENTAL PLATE LABORATORY COMPANY, INC., etc., *et al.*,

Appellants,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* CHICAGO DENTAL SOCIETY, etc., *et al.*,

Appellees.

Appeal From The Supreme Court Of The State Of Illinois.

MOTION BY APPELLEES TO DISMISS APPEAL OR TO AFFIRM JUDGMENT.

OWEN RALL and
JOHN R. PORTER,
135 South LaSalle Street,
Telephone ANdover 3-7300,
Chicago 3, Illinois,
Attorneys for Appellees

PETERSON, LOWRY, RALL,
BARBER & ROSS,
135 South LaSalle Street,
Chicago 3, Illinois,
Of Counsel.

Dated September 7, 1956.

PREVIOUS PAGE WAS BLANK

INDEX

PAGE

I.

The Federal Question Was Properly Preserved 1

II.

Facts Relevant to the Appeal Show This Statute to be a Proper Public Health Measure 2

(a) Prosthetic Dentistry is Closely Related to the Public Health 3

(b) The Acts of the Appellants Are Unlawful 7

III.

The Federal Question Herein Is Not a Substantial One 10

(a) The Illinois Dental Practice Act Does Not Make Mere "Brokers" of Dentists Who Practice Prosthetic Dentistry 10

(b) Rules Applicable to Plumbers Do Not Measure The Professional Responsibility of Dentists Under a Dissimilar Statute 11

(c) The Illinois Legislature May, in Regulating The Dental Profession, Depart From Regulatory Techniques Applicable to Pharmacists and Optometrists 13

(d) The Previous Opinions of This Court Eliminate Any Substantial Federal Question In the Present Case 14

Conclusion 18

PREVIOUS PAGE WAS BLANK

Table Of Cases And Statutes Cited

Cases Cited

PAGE

Amsel v. *Brooks,* 141 Conn. 288, 106 A.2d 152, appeal dismissed 348 U.S. 880 ..... 9, 16-18

Barsky v. *Board of Regents of New York,* 347 U.S. 442 15

People v. *Brown,* 407 Ill. 565 ..... 11, 12

Semler v. *Oregon State Board of Dental Examiners,* 294 U.S. 608 15

Williamson v. *Lee Optical Co. of Oklahoma,* 348 U.S. 483 16

Statutes Cited

Ill. Rev. Stats., 1955, Chap. 91, Sections 58, 60a and 62 ..... 12, 9, 11

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1956

No. 311

A-1 DENTAL PLATE LABORATORY COMPANY, INC., etc., *et al.*,

Appellants,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* CHICAGO DENTAL SOCIETY, etc., *et al.*,

Appellees.

Appeal From The Supreme Court Of The State Of Illinois.

MOTION BY APPELLEES TO DISMISS APPEAL OR TO AFFIRM JUDGMENT.

May It Please The Court:

Now come People of the State of Illinois, *ex rel.* Chicago Dental Society, *et al.*, Appellees, by their attorneys, Owen Rall and John R. Porter, and move that the appeal in the above entitled cause be dismissed or, in the alternative, that the judgment of the Supreme Court of Illinois be affirmed, for the reason that the appeal does not present a substantial federal question.

I.

The Federal Question Was Properly Preserved.

While the appellants properly preserved their contention as to the unconstitutionality of the Illinois Dental

Practice Act, under the Federal Constitution, we contend that no substantial federal question is here presented in view of the prior decisions of this court sustaining the validity of similar statutes under which the police power of a state has been exercised to protect public health. Hence, we make the above motion.

II.

Facts Relevant to the Appeal Show This Statute to be a Proper Public Health Measure.

Note: Appellants' Abstract, filed in the Illinois Supreme Court, consisting of Index and 316 printed pages, cited herein as "Appts.' Abst. p. .....", is attached to page 5 of the the unprinted transcript of record in this Court.

Volume I of the Additional Abstract, filed in the court below, consisting of Index and printed pages 1 to 284, cited herein as "Add'l Abst. p. .....", is attached to page 7 of the unprinted transcript in this Court.

Volume II of the Additional Abstract, filed in the court below, consisting of photographs of appellant dental laboratories and of their advertising material, pages 285 to 361, cited herein as "II Add'l Abst. p. .....", is attached to page 8 of the unprinted transcript in this Court.

Protection of public health by reasonable exercise of the police power of the state is the fundamental premise of the Illinois Dental Practice Act. The Act follows a time-tested and almost universally recognized pattern of subjecting a profession to licensing and regulation because the services rendered by the dental profession so directly relate to the health and welfare of the people that regulation is deemed necessary to protect the public health.

Unlike legislation dealing with ordinary trades, the statute in question places responsibility squarely on the dental profession and at the same time, in the public interest, assures the maintenance of a strong profession by protecting the dental profession from commercialization and exploitation.

Appellants refuse to recognize the public health aspects of prosthetic dentistry—the supplying of functionally correct substitutes for natural teeth. Appellants also refuse to recognize the difference between a trade and a profession and challenge the validity of the statute on the ground that the same principles should apply to the profession of dentistry as are applied to the trade of plumbing.

(a) Prosthetic Dentistry is Closely Related to the Public Health

The Supreme Court of Illinois stated in its opinion (Unprinted Transcript, p. 16; Appellants' Jurisdictional Statement, p. 51):

> "Voluminous testimony establishes beyond doubt that furnishing of artificial dentures is intimately related to the general health of the patient, and that the mechanical work of making the denture is but a small part of the total undertaking, which always requires biological, physiological, and pathological knowledge, and sometimes surgical skill."

The court below did not specify the evidence in this record, but significant health factors involved in prosthetic dentistry are shown in detail by the record here. Eight outstanding practicing dentists and five eminent educators associated with the four dental schools in Chicago, including two of the deans, made it crystal clear in the record of this case that the mechanical labortory work involved in making, reproducing or repairing a denture is only a small part of the total knowledge, skill and effort required to meet the health requirements of any given patient.

Instead of 90% of this total work being done by laboratory workers (as stated in Appellants' Jurisdictional Statement, p. 8), the record really shows that the majority of only the *laboratory work* is done by laboratory workers. There has not been and cannot be any delegation of professional knowledge, skill, or responsibility to the laboratory worker, who is not trained in dental science and medicine, any more than the responsibility for writing a brief can be delegated by a lawyer to a law printer.

As the Supreme Court of Illinois said in its opinion (Unprinted Transcript, p. 16; Appellants' Jurisdictional Statement, p. 52):

> "In our opinion the power of the legislature is not exhausted when it has provided that there shall be professional supervision at the inception and the conclusion of what is essentially a single process. It may, if it sees fit, go further and insure that responsibility to the patient shall not be fragmented, and it may focus that responsibility upon a member of the profession which it regulates."

Appellants indicate that dental schools have practically abandoned prosthetic dental procedures to laboratory workers (Appellants' Jurisdictional Statement, p. 9). Quite the contrary is true.

Loyola University (Chicago) dental students spend approximately one-third of their 1500 hours of clinical time in the field of prosthetic dentistry. Of total curriculum time in 4 years, including lectures, laboratory, and clinic, between 1200 and 1500 hours are devoted directly to prosthetics (Add'l Abst. p. 91, 96).

At Zoller Memorial Dental Clnic of the University of Chicago, approximately 20% of total curriculum time of this post-graduate school is devoted to prosthetics (Add'l Abst. p. 143).

At the University of Illinois, College of Dentistry, first year students spend 364 out of 100 hours studying full denture construction and doing clinical work. In the second year they study partial dentures, including 198 hours in clinic. In the third and fourth years they do further clinical work in denture construction (Add'l Abst. p. 213-215).

Dean Charles W. Freeman of Northwestern University School of Dentistry testified that at that school approximately 20% of the entire curriculum time is devoted to the study of prosthetics and that a national survey of dental schools indicated a range of between 15% and 20% (Add'l Abst. p. 130, 131).

Clinical experience at Loyola University Dental School indicates that at least one-third of patients without any teeth are found, by x-ray, to have underlying pathological conditions, cysts, bony structure, soft and sharp, soft and hard spiculae,—all of which affect the type of denture to be constructed (Add'l Abst. p. 94). Oral surgery is required in the majority of cases where dentures are being made for the patient for the first time (Add'l Abst. p. 88). Surgery is required to remove growths, oddities and protuberances so that an accurate impression can be made (Add'l Abst. p. 85, 86). Surgery is also indicated frequently in the fitting process when partial dentures are being made (Add'l Abst. p. 86).

There is a definite danger to the patient's health if denture work, full or partial is done by someone who does not take into consideration the physiological aspects of the patient's mouth (Add'l Abst. p. 116). Mouth examination and diagnosis, for such landmarks as color indications, are vital in full denture work, since color contrasts may reveal such conditions as anemia and even pre-cancerous lesions (Add'l Abst. p. 106, 107). Anemias, diabetes, and other pathological conditions may be revealed by mouth examina-

tion. Such conditions make a difference in the type of denture a patient could wear because if perfect oral health is not maintained, general atrophy or destruction of healthy tissues will occur and a perfectly fitting denture can become obsolete in a week or two (Add'l Abst. p. 204-206).

The whole physiological function of the masticating machine needs to be studied for pathological conditions before beginning, or even planning, a restoration of the missing parts. The need for knowledge of the biologic and pathologic is the basis for the whole plan and treatment. Performance of any of these clinical operations by a person not a licensed dentist, a person without an understanding of the biological factors involved, would, without question, jeopardize the health of the individual and constitute a danger to public health (Add'l Abst. p. 133, 135).

If an attempt is made to construct dentures without visual observation, plus x-ray, and without consideration of size and strength of the muscles of mastication, muscle tone, facial expression, condition and type of bone structure, relationship of upper and lower ridges, soft tissue coverage, and muscle attachment, even before taking an impression, definite injury to public health would be created. This is true also in case of a partial denture and a replacement (Add'l Abst. p. 144-147, 151).

Loss or impairment of hearing can result from inaccurately registered dentures, the registration of upper and lower jaws having a direct relationship to the nerve which controls hearing (Add'l Abst. p. 171, 172).

Preparation of a patient for dentures must take into consideration his physical history, including his heart, any diabetic condition, hypertension, any of the anemias, tongue movements, jaw relationship, hard and soft tissues, and similar factor (Add'l Abst. p. 217, 218, 222-224).

A dentist who has specialized in denture construction and with special knowledge in the field of materials, testified that from the standpoint of public health there is a very definite significance in having denture materials selected by a licensed dentist because only a dentist would know that certain materials are very harmful when used in mouths having pathological conditions, such as diabetes, present (Add'l Abst. p. 241).

Repair work and construction of partial dentures involve most, if not all, of the health factors which must be considered in making a full denture (Add'l Abst. 112, 114).

The public health aspects of prosthetic dentistry and the basic reason why it is reasonable and necessary to have complete responsibility rest upon the dental profession can well be summarized in the words of Dean Raymond A. Baralt, Jr., of Loyola University School of Dentistry, who testified:

> "It is my opinion that prosthetic dentistry, in the impression taking, fabrication, construction, fitting of a strong and esthetic, durable, functioning appliance is one of the most intricate arts that affect the oral health of a person. As it affects his oral health it affects his entire health." (Add'l Abst. p. 97.)

(b) The Acts of the Appellants Are Unlawful

The Supreme Court of Illinois in its opinion in the case at bar said (Unprinted Transcript, p. 16; Appellants' Jurisdictional Statement, p. 52):

> "Advertising by dentists is severely restricted. The record in this case shows that many of the defendant technicians have by persistent and blatant advertising sought to deal directly with the public, and that control of dental patronage has thus come into the hands of laboratory technicians who have directed it to such dentists as they saw fit."

Volume II of the Additional Abstract (Unprinted Transcript, p. 8) is made up largely of illustrative exhibits showing how neon signs, posters, window displays of dentures, newspaper and telephone directory advertising, and other advertising media are used to attract the unwary person into laboratories of Appellants. II Additional Abstract, pages 285, 286, 290, 295, 303, 320, 333, 340 and 357 (Unprinted Transcript, p. 8) are typical examples of such advertising.

In its decision the Supreme Court of Illinois also said (Unprinted Transcript, p. 16; Appellants' Jurisdictional Statement, p. 56):

> "All of these forms of advertising are clearly prohibited by section 5(a), with the exception of the use of the telephone directory. As to that, the statute permits an announcement 'by business card.' The master found that Dorner came within the purview of section 5(a) but that he was not violating that section's provisions relating to advertising or announcements. This conclusion was predicated upon the interpretation that section 5(a) contains 'no limitation on the size of "announcements" which can be made in a telephone directory.' We disagree; the one-quarter page display advertisements referred to in the master's report and the decree amount to a 'media calling attention of the public to their business,' which is prohibited rather than a 'business announcement' which is permitted. This conclusion applies with like force to defendant's advertising in church publications and in the theater and to his display of specimen dentures in his shop window. While there is no evidence showing that this defendant dealt directly with the public, his advertising activities clearly show a purpose to do so, and in our opinion justify a decree restraining him from dealing directly with the public."

The fact that the Appellants do not advertise in professional dental journals clearly indicates that their target is the general public and not the dental profession. Unlike

the Connecticut statute involved in the case of *Amsel* v. *Brooks*, 141 Conn. 288, 106 A. 2d 152, appeal dismissed, 348 U.S. 880, which prohibited *all types* of advertising by dental laboratories, the Illinois statute here in question does permit advertising "in trade journals and professional publications which circulate among members of the dental profession." The Illinois statute also provides that "announcement may be made by business card, in business and telephone directories, and by signs located upon the premises" subject to certain restrictions as to size and subject matter (Sec. 5a, Illinois Dental Practice Act, Appellants' Jurisdictional Statement, p. 31).

Since the Illinois statute prohibits dental laboratories from dealing directly with the public but permits them to deal only with the dental profession, it is only reasonable and proper that the advertising by dental laboratories should be limited largely to those professional publications which circulate among licensed dentists. Certainly it is not a drastic and unreasonable regulation to prohibit a person from advertising his services among those persons, the general public, with whom he is not permitted to do a lawful business.

The Supreme Court of Illinois said in its opinion (Unprinted Transcript, p. 16; Appellants' Jurisdictional Statement, p. 57) with respect to defendant Martin Dorner:

> "While there is no evidence showing that this defendant dealt directly with the public, his advertising activities clearly show a purpose to do so, and in our opinion justify a decree restraining him from dealing directly with the public."

Advertising by laymen to the public for dental patronage enables the advertiser to steer such patronage to dentists of his own choice or to attempt to render the dental service himself and in either case the effect is detrimental to public health.

The usual dentist-patient relationship cannot exist if the dentist is subservient to a commercial advertiser for obtaining his practice. He would be compelled to accept as little or as much business as the laboratory owner desired to give him. Professional responsibility would be destroyed.

III.

The Federal Question Herein Is Not a Substantial One.

The appellants have misstated the effect of the Illinois statute, have argued that statutory methods applicable to the plumbing trade and optometrists must of necessity be applied to the dental profession, and have failed to distinguish cases in this Court which sustain the Illinois statute here involved as a public health measure well within the legislative competence of the State of Illinois.

(a) The Illinois Dental Practice Act Does Not Make Mere "Brokers" of Dentists Who Practice Prosthetic Dentistry

That the Appellants seek to deal directly with the public and thereby take over a large segment of dental practice is revealed by their argument that the statute in question does not require the dentist to supervise the work and that actually he is required only to be the "broker" between the public and the laboratory.

The dentist is not a mere broker. The statutory declaration that the furnishing of substitutes for natural teeth is the practice of dentistry places on the dentist who employs a dental laboratory to do his mechanical work full professional responsibility for the operation performed by the laboratory. That the statutory provision permitting the employment of a laboratory by a dentist does not spell out the function of the dentist in detail does not make the dentist a broker. Spelling out the dentist's function is

unnecessary because his professional responsibility as a dentist remains and his professional responsibility as a dentist for all other phases of his practice is no greater than it is in the furnishing to his patients of substitutes for natural teeth.

Section 7 of the Dental Practice Act (Appellants' Jurisdictional Statement, p. 32) provides that a dentist's license may be revoked *inter alia*, "for any other improper, unprofessional, or dishonorable conduct in the practice of dentistry." This section is applicable to the dentists's function in furnishing substitutes for natural teeth and disproves the argument that in employing a dental laboratory he is a "broker".

(b) Rules Applicable to Plumbers Do Not Measure the Professional Responsibility of Dentists Under a Dissimilar Statute

The dentist is not given a monopoly under the Illinois Dental Practice Act as master plumbers were given a monopoly under the Illinois Plumbing Law of 1935 which was held invalid by the court below in *People* v. *Brown*, 407 Ill. 565 (Appellants' Jurisdictional Statement, p. 61). Under the latter statute it was impossible for any person to enter the plumbing trade even as an apprentice without the approval of a master plumber. The apprentice could be employed by a journeyman but the latter had to be in the employ of a master plumber. Therefore, the master plumber was given authority to determine who could enter the plumbing trade. No such monopoly is given to dentists under the Dental Practice Act. If a person desires to learn the trade of a dental laboratory technician, he applies for work at a dental laboratory. Nothing in the statute requires him to be approved by a dentist or to be hired by a dentist. His employer, of course, should have enough

business to justify hiring an apprentice and in order to have sufficient legitimate business he must produce work satisfactory to the dental profession, his customers. But that does not give the laboratory's customers an illegal monopoly over the apprentice's employer any more than it gives the customers of any business illegal control over the enterprise.

The only requirement is that the workman, the laboratory technician, be worthy of his hire. If he is, he will get his share of business in open competition with others of his trade.

Not only are licensed dentists without power to determine who shall enter the dental laboratory trade, but they cannot bar a person from the dental profession itself. If an applicant can meet the requirements of citizenship, moral character, and education prescribed by Section 3 of the Illinois Dental Practice Act (Ill. Rev. Stat., 1955, Chap. 91, Sec. 58), he is entitled to obtain a license to practice dentistry. Such was not the case of an individual wanting to become a master plumber under the statute held invalid in the *Brown* case.

A second very important distinction between the case at bar and *People* v. *Brown,* 407 Ill. 565, is that here we are dealing with a profession and the court in that case was dealing with a trade.

The Supreme Court of Illinois said in its opinion below (Unprinted Transcript, p. 16; Appellants' Jurisdictional Statement p. 54):

> "There is in the present case no prescribed economic hierarchy, with access to each successive stage controlled by the dominant interest. Any person is free to become a dental laboratory technician. The statute places no artificial restraint upon him. His success is determined by the normal process of competition. By the statute his direct dealings are limited to those who are peculiarly fitted by education and training to judge

> the quality of his work. But in this restriction there may be protection for members of the public who lack the capacity to make an informed appraisal of the quality and value of the product, and protection as well for the economic independence of a profession serving public health needs."

Therein lies one of the fundamental reasons why the police power of the legislature may be exercised to provide professional supervision over, and responsibility for, the entire process of making, reproducing, or repairing a dental appliance.

With respect to that power, the Supreme Court of Illinois held that the legislature may "insure that responsibility to the patient shall not be fragmented, and it may focus that responsibility upon a member of the profession which it regulates" (Unprinted Transcript, p. 16; Appendix to Jurisdictional Statement, p. 52).

(c) The Illinois Legislature May, in Regulating the Dental Profession, Depart from Regulatory Techniques Applicable to Pharmacists and Optometrists

Although Appellants concede that the making and fitting of dentures are matters affecting public health, they contend that the regulatory provisions of the Illinois statute here involved should be similar to statutes dealing with pharmacists, optometrists, opticians and others, so that a person could get a prescription for a denture from a dentist and be free to go to a laboratory worker of his own choosing to have the denture made.

One of the fallacies of this argument is that dentures cannot be prescribed with that mathematical certainty which would permit an unsupervised laboratory worker to produce the desired prosthetic device, and therefore such practice would delegate to a person not trained in dental

medicine the professional responsibility of determining whether or not the denture fits the patient's mouth and fulfills the requirements of the original diagnosis.

The Appellants concede in this Court that the evidence in this record proves that there is no such thing as a prescription for a dental plate (Appellants' Jurisdictional Statement, p. 9), yet they contend that due process is denied because the statute does not provide for a procedure similar to that in areas where prescriptions are practical and safe. The two situations are not parallel.

Although a pharmacist may fill a prescription according to an exact chemical formula and an optical lens may be ground to precise conformity with universally accepted and identified standards, each prosthetic dental appliance must be "custom-made" for a particular mouth and cannot be standardized (Add'l Abst. p. 208).

In dentistry there are not even any standard symbols or numbers that could be mathematically interpreted by a technician who was attempting to follow instructions from a dentist (Add'l Abst. p. 149). Work orders or authorizations can be given but there is a distinction between such instructions and a prescription such as is used for eye glasses (Add'l Abst. p. 150). Instead of prescriptions, dentists use impressions or models of one sort or another and written instructions, often supplemented by telephone or personal conversations with the laboratory technician (Add'l Abst. p. 175).

(d) The Previous Opinions of This Court Eliminate Any Substantial Federal Question in the Present Case

The argument by Appellants that the Illinois Dental Practice Act deprives them of due process of law and equal protection of the law presents now no substantial Federal question in view of an unbroken line of cases decided by this Court on similar and related stattues.

Semler v. *Oregon State Board of Dental Examiners*, 294 U.S. 608 (1935): Oregon dental practice act which prohibits certain types of advertising by dentists held not violative of the Federal Constitution.

The Court, by Mr. Chief Justice Hughes, said (p. 611):

> "That the State may regulate the practice of dentistry, prescribing the qualifications that are reasonably necessary, and to that end may require licenses and establish supervision by an administrative board, is not open to dispute. Douglas v. Noble, 261 U.S. 165; Graves v. Minnesota, 272 U.S. 425. The State may thus afford protection against ignorance, incapacity, and imposition. Dent v. West Virginia, 129 U.S. 114; Graves v. Minnesota, supra."

The Court said further (p. 612):

> "The community is concerned with the maintenance of professional standards * * * the community is concerned in providing safeguards not only against deception, but against practices which would tend to demoralize the profession by forcing its members into an unseemly rivalry which would enlarge the opportunities of the least scrupulous."

Barsky v. *Board of Regents of New York*, 347 U.S. 442 (1954): The State may constitutionally provide for the suspension of a physician's license because of his conviction in a foreign jurisdiction for an offense not involving moral turpitude and not criminal under the law of the State.

The Court said (p. 449):

> "It is elemental that a state has broad power to establish and enforce standards of conduct within its borders relative to the health of everyone there. It is a vital part of the state's police power. The state's discretion in that field extends naturally to the regulation of all professions concerned with health."

Williamson v. *Lee Optical Co. of Oklahoma,* 348 U.S. 483 (1955): It is not unconstitutional for the State to require the written prescription of a licensed ophthalmologist or optometrist to fit lenses to a face or to duplicate or replace into frames lenses or other optical appliances. Nor is it unconstitutional to subject opticians to a regulatory system and to exempt therefrom all sellers of ready-to-wear glasses. It is not unconstitutional to make unlawful the solicitation of the sale of frames, mountings, or any other optical appliances. Lastly, the provision of the Oklahoma Act is not unconstitutional in prohibiting a retailer of merchandise dealing with the general public from renting space, subleasing departments, or otherwise permitting any person purporting to do eye examination or visual care to occupy space in such retail store.

The Court, by Mr. Justice Douglas, said (p. 487):

> "But it is for the legislature, not the courts, to balance the advantages and disadvantages of the new requirement."

The Court said further (p. 488):

> "It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it.
>
> "The day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particiular school of thought."

Amsel v. *Brooks,* 348 U.S. 880 (1954):

> "Per curiam: The appeal is dismissed for the want of a substantial Federal question."

This case below is reported in 141 Conn. 288, 106 A.2d 152 (1954).

In the *Amsel* case, referred to by Appellants (Jurisdictional Statement, p. 12), the statutory definition of the practice of dentistry was almost identical with that contained in the Illinois Dental Practice Act. The Connecticut statute prohibited all direct dealing with the public. Its validity was challenged on much the same grounds as are relied upon by Appellants here. It was argued in the Connecticut case that the statute served only the interests of the dental profession, that it did not define clearly the act or acts constituting a violation, and that it was an unwarranted delegation of legislative power to the State Board of Dental Commissioners. For these reasons it was contended that the Connecticut statute constituted an unwarranted and arbitrary interference with the dental laboratory's right to carry on a lawful business, in violation of Section 1 of the Fourteenth Amendment of the Federal Constitution.

Counsel for plaintiff laboratory in the Connecticut case advanced much the same argument as is presented here by the Appellants, namely, that if certain acts are done by the laboratory worker under employment by a dentist they are lawful, but it not done under employment by a dentist they are unlawful; that the dentist is under no duty to examine the patient for the work to be done; that the laboratory worker to whom the dentist sends business need have no skill or training whatever; and that therefore no real protection is given to the public by the statutory prohibition against a laboratory's dealing directly with the public.

Under the Connecticut statute the forbidden acts include delivery of a dental appliance to anyone but the dentist under whose supervision the work was done.

The Connecticut Supreme Court of Errors held (106 A.2d 157):

> "No one has an inalienable right to pursue a profession or vocation which requires special knowledge or

peculiar skill and is therefore a proper subject for supervision in the interest of the public welfare."

The Connecticut court held the statutory intent to be clear, that the acts in question were prohibited to a layman unless under the supervision and with the approval of a licensed dentist, and that this was not an unreasonable or arbitrary exercise of police power. The court also held that a statute which is otherwise within the police power is not unconstitutional merely because it incidentally benefits a limited number of people. As stated, this Court dismissed an appeal in the *Amsel* case for want of a substantial federal question.

Conclusion.

Since the present case involves statutory regulation by a state of a profession directly related to public health, which regulation has been held by the Supreme Court of that state to be reasonable and in the public interest, and in view of the prior decisions of this Court, referred to above, it is evidence that not substantial federal question is involved and this appeal should be dismissed or, in the alternative, the judgment of the Supreme Court of Illinois should be affirmed.

Respectfully submitted,

Owen Rall and
John R. Porter,
135 South LaSalle Street,
Chicago 3, Illinois,
Attorneys for Appellees

Peterson, Lowry, Rall,
Barber & Ross,
Of Counsel.

September 7, 1956

BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM.

(Outside cover missing)

INDEX

PAGE

I.

The Federal Questions Were Properly Preserved. 2

II.

The Sections of the Statute Under Attack Are Not a Proper Public Health Measure 2

(a) The Provisions of the Statute Have No Relationship to the Public Health 2

(b) The Acts of Appellants Are Lawful 4

III.

The Federal Question Herein is a Substantial One 4

(a) The Illinois Dental Practice Act Makes the Dentist Nothing More Than a Mere Broker of Employment With Respect to Prosthetic Appliances 4

(b) The Decisions of the Illinois Supreme Court in the Plumbers' Cases Are Not Distinguishable in Principle from the Case Here Under Consideration 6

(c) The Illinois Legislature Not Only Departed from Ordinary Regulatory Techniques But Completely Abdicated Its Power in Favor of a Chosen Few 8

(d) The Previous Opinions of This Court Would Seem to Require That the Statute Be Examined to Determine Whether State Legislatures May Take the Ultimate Step of Creating a Dominant Class Empowered to Grant or Withhold the Right to Carry on a Given Occupation—Whether No Process of Law Is Due Process of Law 9

Conclusion 11

PREVIOUS PAGE WAS BLANK

TABLE OF CASES AND STATUTES CITED

Cases Cited

Amsel v. Brooks, 141 Conn. 288, 106 A. 2d 152, 348 U.S. 880 ..... 3, 10

Barsky v. Board of Regents of New York, 347 U. S. 442 9-10

Lasdon v. Hallihan, 377 Ill. 187 8

People v. Brown, 407 Ill. 565 6

Schroeder v. Binks, 415 Ill. 192 6

Semler v. Oregon State Board of Dental Examiners, 294 U. S. 608 9

Williamson v. Lee Optical Co. of Oklahoma, 348 U. S. 483 10

Statutes Cited

Illinois Revised Statutes, 1955, Chapter 91, Section 60a 2

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 311

THE PEOPLE OF THE STATE OF ILLINOIS, EX REL. CHICAGO DENTAL SOCIETY, ETC., ET AL.,
Appellees,

vs.

A A A DENTAL LABORATORIES, INC., ETC., ET AL.,
(*Defendants*),

A-1 DENTAL PLATE LABORATORY COMPANY, INC., AN ILLINOIS CORPORATION, ET AL.,

AND

MARTIN DORNER, DOING BUSINESS AS CAPITOL DENTAL LABORATORIES, INC., ETC., ET AL.,
Appellants.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM.

MAY IT PLEASE THE COURT:

The appellants file this Brief in Opposition to the Motion of Appellees to Dismiss Appeal or to Affirm Judgment.

I.

THE FEDERAL QUESTIONS WERE PROPERLY PRESERVED.

It appears to be agreed that the Federal questions have been properly preserved.

II.

THE SECTIONS OF THE STATUTE UNDER ATTACK ARE NOT A PROPER PUBLIC HEALTH MEASURE.

It has not been debated that a proper exercise of the police power could constitutionally be enacted in the field under discussion. This, however, is not a police measure.

It places no responsibility on the dental profession, either as to the qualification of the laboratory technicians who do the work or as to the work actually done in any case

The sections are, on the contrary, calculated to give an economic advantage to one profession and to place another occupation in subjugation to that profession. By the very words of the statute in Section 5a (original Statement, p. 14), any person, firm or corporation may construct or repair prosthetic dentures, etc., with no requirement of prior experience or training. All that is required is that the employment come through a licensed dentist as a middleman.

(a) The Provisions of the Statute Have No Relationship to the Public Health.

Appellees devote several pages to an attempt to relate prosthetic dentistry to the public health. The type of situation described in the testimony to which appellees refer is usually present only in unusual and extraordinary cases.

As a matter of fact, more than 90% of the construction and repair of artificial dentures is now being done by non-

dentists. This is pointed out fully on pages 7 to 9 of the original Statement as to Jurisdiction. The making of false teeth and especially the repair thereof has, by the action of the dentists themselves, become a separate and distinct occupation.

Appellees' presentation (pages 3 to 7), in which a relationship to public health is sought to be established, actually amounts to an argument against the constitutionality of the statute. If the making of dentures or their repair is of that importance, the statute falls far short of protecting the public health. Under it *any* person, firm or corporation may make or repair dentures. The sole qualification is that the employment come through or be brokered by a licensed dentist. No professional responsibility is by the statute placed upon the dentist. This is quite different from *Amsel* v. *Brooks*, 141 Conn. 288, 106 A. 2d 152. There the construction of the Connecticut statute was held to require that the services "shall not be performed unless a duly licensed dentist prescribes them, supervises their performance and approves their result." Without that direction they were prohibited to a layman. Earlier that Court had defined direction as meaning the act of directing, or guidance, or management.

In the Illinois statute, however, no such professional obligation or responsibility is placed upon the dentist.

It merely provides that the dentist may establish any person, firm or corporation as a laboratory technician, or, on the other hand, prevent any person, even though well qualified, from being a technician.

While appellees attempt to make it appear that this function is vital to the public health, their argument fails to support a statute which would permit any person whomsoever to perform these allegedly vital health functions.

There is indeed no connection with the public health in

the sections of the statute which are assailed. They are nothing more than a law of economic control and economic advantage.

Their disregard of the public health places those sections in a different category from the statutes which have been upheld by this and other courts.

(b) The Acts of Appellants Are Lawful.

The general statement made by appellees (pp. 7 to 10) that the acts of appellants are unlawful is beside the point. If the statute is unconstitutional, as we contend, the acts are not unlawful.

The provisions as to advertising stand or fall with the substantive provisions having to do with the legality of giving the dental profession monopolistic control over who may do the work of a laboratory technician.

III.

THE FEDERAL QUESTION HEREIN IS A SUBSTANTIAL ONE.

(a) The Illinois Dental Practice Act Makes the Dentist Nothing More Than a Mere Broker of Employment With Respect to Prosthetic Appliances.

A prior statute of Illinois did purport to place some professional responsibilities on the dentist, but by amendment, those requirements were eliminated. The present statute contains no requirement of any professional responsibility, either of prescription, supervision or subsequent examination. It merely provides employment by a dentist as the only test of whether a laboratory technician may do his work.

Appellees have attempted to read many things into the statute which are not there.

In actual practice the dental profession has largely abdicated its function—at least to the extent of 90%—in the making of prosthetic dental appliances. The evidence reviewed in the Statement as to Jurisdiction shows how completely this has been done. The dentists themselves have brought about that result. They could be making false teeth and repairing them, if they desired to do so; but they have left that work to the dental laboratories, and even in their preparation in the universities, their dealing with dental plates is purely perfunctory. It is actually supervised by laboratory technicians who are not dentists.

The statute places no responsibility upon the dentist for the planning and design of a denture or for its examination. He has no professional responsibility. It is only an economic advantage that is given to the dentist without any thought of the public.

It is and has been the contention of the appellants that a constitutional statute could be drawn for the admission of dental technicians to the carrying on of their occupation under rules, prescribed by the general assembly, as to training, experience and character.

Instead, however, the Illinois statute permits any man, whether or not he has had experience or training, and without respect to his character, to make or repair dentures—so long as the employment is brokered through a dentist.

Whether such a plan of statutory control, giving one class of the citizenry this despotic control over another class of the citizenry, can be carried out under the due process provision of the Constitution is manifestly a serious question.

It would appear clear that a pharmacist performs functions as closely related to public health as does a dental technician. There the practice has been to prescribe the

qualifications—educational and by experience—of a pharmacist and the process for his admission to that occupation. It has never been the practice to make the pharmacist subservient to the doctor. Once the doctor has prescribed, the patient may employ any licensed pharmacist.

But here nothing is provided by the general assembly as to the education, training or qualification of a laboratory technician. Everything is left to depend on whether employment is made by a dentist, in which case any person, firm or corporation may do the work; but without such employment, even the most experienced and capable is arbitrarily barred from pursuing his occupation. If such a plan of control be valid, it is a new concept in the law of due process.

(b) The Decisions of the Illinois Supreme Court in the Plumbers' Cases Are Not Distinguishable in Principle from the Case Here Under Consideration.

Appellees make a vain attempt (pages 11-13) to distinguish the decisions of the Illinois Supreme Court in the plumbing cases (*People* v. *Brown*, 407 Ill. 565; *Schroeder* v. *Binks*, 415 Ill. 192). The principle of those decisions is applicable here. The situation, however, is worse, from a constitutional standpoint, in the instant case than it was in those cases. There the master plumbers had absolute control of who could prepare himself for this occupation by becoming an apprentice. Only the master plumber could employ an apprentice; and such employment was a prerequisite to becoming a journeyman and later a master plumber. This plan of control was twice roundly condemned by the Supreme Court of Illinois.

Here the situation is worse. Under the section being considered a person may prepare himself to be a laboratory technician, may acquire the education, training and expe-

rience necessary to make an efficient technician, but that is not enough. After all this has been done, he can engage in this occupation only through grace of the dentist.

If for any reason the Chicago Dental Society decided to put a technician out of business, is there any doubt as to the support it would get from its members?

In the plumbers' cases, if the person did succeed in getting employment as an apprentice and later as a journeyman, and thereby became a master plumber, he was then a free agent. Here however, a person may be a technician of splended ability, but if he does not comply with the arbitrary requirements and demands of the dentist, he cannot perform any work at all.

Appellees also attempt to make a second distinction—between a profession and trade. Actually the plumbing trade is as intimately connected with public health as is dentistry—perhaps more so, as one serious error in a plumbing installation may start a typhoid epidemic in an entire community. The consequences of an error on the part of a laboratory technician are much more limited.

The quotation from the opinion under review (Appellees' Br., pp. 12-13) could be applied with equal force to the plumbing situation.

Moreover, this argument of appellees overlooks an important consideration, and that is that the laboratory technician who has and is able to demonstrate ability has no protection in the law. Emphasis is placed by the Illinois Court and by appellees on protection to the public and protection to the dental profession. These are probably important. But there is another person, the laboratory technician, who by training, education and experience has become adept in this activity. His rights are completely ignored. Only the whim of the dentist determines whether he may carry on his occupation or whether he is wiped out completely.

This, we insist, is not in accord with due process of law. It is a reversion to an older type of social organization in which an exalted class is given absolute power over another—supposedly lower class—to which the upper class may graciously grant permission to exist or for no reason or for any reason may obliterate the livelihood of any member of the subject class completely. Appellees have apparently been able to find no case in which such autocratic power has been upheld.

(c) The Illinois Legislature Not Only Departed from Ordinary Regulatory Techniques But Completely Abdicated Its Power In Favor of a Chosen Few.

Under this heading appellees have argued that there can be no prescription for a dental plate. Under a previous Illinois statute, it was provided that places could be made by one not licensed or registered as a dentist if (i) the impression for the plate was made by a dentist; (ii) the plate was made upon order or prescription given by a dentist; (iii) the placing and adjustment of the plate in the oral cavity was done by a dentist. This statute was *per dictum* held constitutional in *Lasdon* v. *Hallihan*, 377 Ill. 187. It was in effect for many years.

But apparently the appellees and those whom they represent were not satisfied with that statute. It was repealed. Instead the legislature was induced to give the entire control of the situation, by mere employment, to the dental profession.

Often a mathematical prescription probably cannot be given for the making of a dental plate. Its fitting is frequently the result of trial and error, whether the work is done by a dentist or a laboratory technician. But the specialized experience of laboratory technicians,—an experience which dentists lack because their work is pre-

dominantly on natural teeth—is often indispensable to a good result. The vice of this situation is in the fact that the dentist arbitrarily makes the laboratory technician or unmakes him under the Illinois statute, and that without regard to the ability, training or experience of the technician.

The argument of appellees therefore overlooks the patent fact that the right of a laboratory technician to carry on that occupation is dependent entirely upon the whim of a dentist. Under the statutory provisions which are being attacked, the user of the plate, who pays for it, has no choice as to who is to make the plate—this too may involve deprivation of property rights.

But most important is that the trained technician has no protection in the law of the land—he works, if at all, by the whimsical grace of a dentist or dentists.

(d) The Previous Opinions of This Court Would Seem to Require That the Statute Be Examined to Determine Whether State Legislatures May Take the Ultimate Step of Creating a Dominant Class Empowered to Grant or Withhold the Right to Carry on a Given Occupation—Whether No Process of Law Is Due Process of Law.

The cases cited give no aid to appellees.

Semler v. *Oregon State Board of Dental Examiners*, 294 U. S. 608 (1935), is cited. This case did not involve laboratory technicians. It concerned only the validity of an Oregon statute which regulated advertising by dentists themselves. It is not pertinent to the question here involved—whether the control of an occupation may be placed in a group of citizens whose own occupation may have some relationship to the regulated area. The case, by no extension of its meaning, would have any relevancy to the due process question here involved.

Nor is *Barsky* v. *Board of Regents of New York*, 347

U. S. 442 (1954) in any manner helpful. The only point decided was that a physician licensed in New York could, under the New York statute, constitutionally be suspended on account of conviction in a foreign jurisdiction, even though the crime of which he was convicted involved no moral turpitude and would not have violated a New York criminal statute. The question there was not even remotely related to the one here presented.

Williamson v. *Lee Optical Co. of Oklahoma*, 348 U.S. 483, has been referred to in the Jurisdictional Statement (p. 11). The distinction between the Oklahoma statute there and the Illinois statute now under consideration was developed in that statement (p. 11). Again, the distinction between the *Williamson* case and the case at bar is clear.

Finally, appellees rely on *Amsel* v. *Brooks*, 141 Conn. 288, 106 A. 2d 152, and the dismissal of the appeal by this Court, 348 U. S. 880. The difference between the Connecticut statute and the Illinois statute has hereinabove been developed (Point II (a)).

There is another distinction (already pointed out in the Jurisdictional Statement (p. 12)). The Supreme Court of Connecticut held a portion of the statute unconstitutional. Certain of its provisions made the technicians dependent exclusively upon customers sent by a licensed dentist. This was held to be the result of the advertising provisions of that statute. The provisions were held unconstitutional.

Here there is not even a pretense of professional activity by the dentists in the preparation, making or fitting of plates. The only thing that is done is a frank and undisguised effort to do what the Connecticut statute apparently attempted to do in an indirect manner. The *Amsel* case is pertinent authority against the constitutionality of the sections of the Illinois statute here assailed.

It thus appears that the authorities cited by appellees are not *apropos*. They do not even remotely touch the due process question presented by this appeal. In fact, the Connecticut opinion favors the view taken by appellants in this cause.

CONCLUSION.

It is respectfully submitted that the sections of the statute which this Court is asked to consider present a novel question of due process. The states have heretofore passed regulatory measures respecting professions and occupations affecting the public health. Their power to do that in a constitutional manner consistently with due process is not questioned. The usual forms of such regulatory statutes have been discussed in the Jurisdictional Statement.

Here, however, we have a new question—which is whether all regulatory powers, including the absolute power of decreeing the economic life or death of a member of one occupational group may be vested in another group (here the dental profession)—without statutory rules to guide it and with no process of law to protect the rights of the laboratory technicians group or secure their right to pursue a livelihood without subjugation to a special class.

The tendency of the professions to attempt to obtain legislation which goes farther and farther, to build up power of the profession at the possible expense of other groups, has been noted. This case, however, is the extreme. Never before (except possibly in the Idaho case cite in the Jurisdictional Statement, p. 10) has any legislature attempted a regulatory statute so clearly in disregard of due process as it has heretofore been understood.

Appellees have cited not a single authority upholding a statute as extreme as this one; neither this Court or any

state court has approved an enactment as arbitrary and unreasonable as this one. Significantly, appellees have presented *no reasoning* on which the sections assailed could be held to afford due process. To attempt to justify them as a "focusing" of responsibility is to offer empty words as a substitute for substantial rights under the Constitution.

The question here is new, involving rights vital to the appellants, as well as the thousands of other citizens whose future depends on an adherence to the constitutional protection of due process.

WERNER W. SCHROEDER *and*
OLIVER C. HEYWOOD,
One N. La Salle Street,
Chicago 2, Illinois
Attorneys for Appellants.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956.

No. 311

THE PEOPLE OF THE STATE OF ILLINOIS, EX REL., CHICAGO DENTAL SOCIETY, ETC., ET AL.,
Appellees,

vs.

A A A DENTAL LABORATORIES, INC., ETC., ET AL.,
(*Defendants*),

A-1 DENTAL PLATE LABORATORY COMPANY, INC., AN ILLINOIS CORPORATION, ET AL.,

AND

MARTIN DORNER, DOING BUSINESS AS CAPITOL DENTAL LABORATORIES, INC., ETC., ET AL.,
Appellants.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

PETITION FOR REHEARING.

WERNER W. SCHROEDER AND
OLIVER C. HEYWOOD,
One N. LaSalle Street,
Chicago 2, Illinois,
Attorneys for Appellants.

Dated November 7, 1956.

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 311

THE PEOPLE OF THE STATE OF ILLINOIS, EX REL. CHICAGO DENTAL SOCIETY, ETC., ET AL.,
Appellees,

vs.

A A A DENTAL LABORATORIES, INC., ETC., ET AL.,
(*Defendants*),

A-1 DENTAL PLATE LABORATORY COMPANY, INC., AN ILLINOIS CORPORATION, ET AL.,

AND

MARTIN DORNER, DOING BUSINESS AS CAPITOL DENTAL LABORATORIES, INC., ETC., ET AL.,
Appellants.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

PETITION FOR REHEARING.

Petitioners pray that this Court reconsider its order of October 15, 1956, dismissing the appeal for want of a substantial Federal question, and upon reconsideration to take jurisdiction and hear the appeal.

The following are the reasons in support of this Petition:

Petitioners appealed to this Court challenging the Illinois Dental Surgery Act (insofar as it applied to them

PREVIOUS PAGE WAS BLANK

because it deprived them of liberty and property without due process of law, and denied them equal protection of the laws. The Illinois Dental Surgery Act inhibits petitioners in the making of dentures. It pretends to regulate them without setting standards with which they may comply, without fixing requirements which they may meet, without provision for recognizing or licensing them in any way. Petitioners are forbidden to carry on their occupation except where they are employed exclusively by dentists. It one is so employed, his work is made legal; if there is so much employment, the same work becomes illegal—even criminal. The dentist class is given imperial powers—not constitutional ones.

In our Jurisdictional Statement (p. 10), we said that the Illinois statute goes beyond any regulatory statute that has been considered and upheld by this or any other court. Insofar as the Dental Surgery Act applies to the makers of dentures, the legislature has not regulated—it has abdicated—in favor of private citizens.

We are aware that this Court said in *Williamson* v. *Lee Optical Co. of Oklahoma*, 348 U.S. 483, 488, that the day is gone when this Court uses the due process clause of the Fourteenth Amendment to strike down state regulatory laws. We respectfully submit that the Court overlooked the fact that the law assailed here is not the usual kind of regulatory law, but is something new and unique. The law does not regulate dental technicians, and this much is conceded in the opinion of the Illinois Supreme Court. Instead of directly regulating the dental technicians, the law "focuses responsibility" for them upon the dentists who are regulated (See Opin. Ill. Supreme Court, Juris. State. p. 52).

We urge this Court to reconsider what this law does, and ask the Court whether the day is also gone when an

oppressed minority may seek relief in court from a bad law, when (from the very fact of its minority) it is unlikely to obtain relief from the legislature.

The Illinois law makes it illegal for those whose livelihood is making dentures to deal with any person other than a relatively small but highly organized group—the dentists.

No other occupation in the country is saddled with such restrictions *by law*. No other artisan who makes articles for use by the general public must *by law* sell his products only to a small professional class rather than to the general public.

The power to buy or not to buy, to patronize or not to patronize is an economic factor of great importance. It brings prosperity to some and failure or marginal existence to others. If the power to patronize is allowed to operate unmolested, an artisan may fail, but he does so as a result of his own actions or the lack of them.

The vice of the Illinois Act is that it takes from the general public the power to buy an article or preparation used by it, and gives that power to an organized few. To have one's livelihood at the sufferance of the general public is something with which we all contend; but to have a statute place one's livelihood at the mercy and sufferance of a small professional group, highly organized into powerful societies, is a new departure in American law.

The Illinois Act masquerades as a public health measure. While the statute may bear on matters of public health, its principal effect is to give dentists an abritrary economic power unprecedented in our law. If public health were the prime consideration, this could have been achieved by accepted forms of regulation—setting up definite standards of schooling, training and scpervision. It could have provided for prescription of dentures by den-

tists and final approval of the work without giving the dentists the life and death power that they now have over dental technicians.

This new theory of regulation which the Supreme Court of Illinois has called the "focusing of responsibility" can have very far reaching effects upon the law of our land.

At present the dental technicians stand alone as victims of this nebulous yet stifling form of "regulation." We beg the Court to examine the plight of the "regulated" dental technicians. They have no standards or guide-posts in the law. Unlike optometrists, pharmacists and many other regulated occupations, they cannot go to the statute books to learn the requirements and qualifications for becoming a technician. There are none. While the making of dentures requires great skill and training, the statute makes no provision for any training, no provision for any examination, and no provision for licensing qualified technicians.

If the dentists, through their dental societies, decide to boycott certain technicians, those technicians are through. They have no recourse to any impartial tribunal, no appeal. Is this regulation or economic serfdom?

If the technicians are to be regulated, let it be done by objective standards and specific requirements and not by making the technicians pawns of private citizens professionally jealous of any encroachment upon their royal preserve.

When the Court said in the *Williamson* case that the day is gone when the due process clause is used to strike down state regulatory laws, it could not have meant that state laws have become wholly immune to the Fourteenth Amendment.

Our appeal has been based on both a violation of the

due process and equal protection clauses of the Fourteenth Amendment (Juris. State. 6-8, 10-19).

In *Bolling* v. *Sharpe*, 347 U. S. 497, 98 L. ed. 884, 886, this Court said:

> "But the concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive. The 'equal protection of the laws' is a more explicit safeguard of prohibited unfairness than 'due process of law,' and, therefore, we do not imply that the two are always interchangeable phrases."

The "focusing of responsibility" for one class of citizens upon another class of citizens is a bizarre form of regulation and has never been sanctioned by this Court.

We respectfully urge the Court not to give life to this alien doctrine by the dismissal of the appeal, but to take jurisdiction and decide the fundamental questions raised only after full hearing on briefs and oral argument. The principle here involved affects the livelihood of thousands throughout the United States.

Respectfully submitted,

WERNER W. SCHROEDER and
OLIVER C. HEYWOOD,
One N. LaSalle Street,
Chicago 2, Illinois,
Attorneys for Petitioners (Appellants).

CERTIFICATE OF COUNSEL.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

WERNER W. SCHROEDER,
One of the Attorneys for
Petitioners (Appellants).

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

APR 20 1981
ALEXANDER L. STEVAS,
CLERK

NO. 80 - 1602

THE ILLINOIS STATE DENTAL SOCIETY, ET AL.,
Petitioners,

v.

HELEN SCHILLER, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

Sheldon Gardner
Richard S. Kuhlman
George C. Pontikes
FOSS, SCHUMAN & DRAKE
11 S. LaSalle Street
Chicago, Illinois 60603
(312) 782-2610
ATTORNEYS FOR RESPONDENTS

TABLE OF CONTENTS

	Page
OPINION BELOW.....	1
REASON FOR DENYING WRIT.....	2
STATEMENT OF THE CASE.....	3
ARGUMENT.....	
I. THE SEVENTH CIRCUIT COURT OF APPEALS DECISION IS NOT IN CONFLICT WITH THIS COURT'S DECISION IN AAA DENTAL LABORATORIES, INC. v. ILLINOIS EX REL, CHICAGO DENTAL SOCIETY, 352 U.S. 863 (1956), WHICH WAS DISMISSED FOR WANT OF A SUBSTANTIAL FEDERAL QUESTIONS.....	10
II. THE SEVENTH CIRCUIT COURT OF APPEALS PROPERLY CONSIDERED THE OPINION AND JUDGMENT OF THE ILLINOIS SUPREME COURT OPINION IN PEOPLE v. AAA DENTAL LABORATORIES, 8 ILL.2d 330, 134 N.E.2d 285 (1956).....	19
CONCLUSION.....	24

TABLE OF AUTHORITIES

CASES

People v. Brown, 407 Ill. 565, 95 N.E.2d 888 (1951)

Schroeder v. Binks, 415 Ill. 192, 113 N.E. 2d 169 (1953)

OTHER

Stedman's Medical Dictionary, 23rd Ed. (1976)

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. 80 - 1602

THE ILLINOIS STATE DENTAL SOCIETY, ET AL.,
Petitioners,

v.

HELEN SCHILLER, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

OPINION BELOW

The opinions of the District Court and the Seventh Circuit Court of Appeals are unpublished. These opinions are set forth in the Petitioner's Appendix at pages 11a and 1a respectively.

REASONS FOR DENYING THE WRIT

I.

THE SEVENTH CIRCUIT COURT OF APPEALS' DECISION IS NOT IN CONFLICT WITH THIS COURT'S DECISION IN AAA DENTAL LABORATORIES, INC. v. ILLINOIS EX REL, CHICAGO DENTAL SOCIETY, 352 U.S. 863 (1956), WHICH WAS DISMISSED FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION.

II.

THE SEVENTH CIRCUIT COURT OF APPEALS PROPERLY CONSIDERED THE OPINION AND JUDGMENT OF THE ILLINOIS SUPREME COURT OPINION IN PEOPLE v. AAA DENTAL LABORATORIES, 8 ILL. 2d 330, 134 N.E.2d 285 (1956).

STATEMENT OF THE CASE

The following statement of the case is made in order to correct distortions which appear in the statement filed by Petitioners.

Respondents filed a complaint in the United States District Court for the Northern District of Illinois. Their complaint alleged, among other things, that Illinois' statutory scheme regulating dentists was unconstitutional in that it precluded qualified denturists from providing denture care, and advertising directly to the public. The District Court dismissed the Respondents' complaint. Upon appeal, the Seventh Circuit Court of Appeals reversed the District Court decision and remanded for an evidentiary hearing as to whether or not the statute is unconstitutional as applied to Respondents.

A proper statement of the case must be limited to those facts properly pleaded by the Respondents since Petitioners' Motion

to Dismiss concedes all facts properly pleaded. Petitioners include in their petition, statement of facts that are without basis in the record.

The facts in the instant case which are relevant before this Court and included in Respondents' Complaint, are as follows:

1. Respondents are denturists, a group of persons skilled both in the making and fitting of dentures. Denturism is recognized as a distinct profession in many foreign countries. Denturists are allowed to take impressions, manufacture and fit dentures into the oral cavity, and sell dentures directly to the public. Denturism has already been legalized in some states within this country, including Maine and Arizona. Since the filing of the Complaint, denturism has become legal in Oregon and Colorado. (Complaint Count I par. 7).

2. Petitioners are local dental societies and their agents, who have used the Illinois statute to prosecute denturists in violation of 42 U.S.C. §1983.

3. The Illinois Dental Practice Act grants to dentists a monopoly to fit dentures even though Respondents-denturists are qualified to fit dentures safely. The public is thereby harmed because an artificial market is created whereby excessive prices are charged for dentures. (Complaint Count I par. 11).

4. The Respondents-denturists are harmed economically because they are only able to sell dentures to dentists, who control the price at which Respondents' dentures are sold.

5. As a result of this statutory scheme, Respondents-denturists cannot practice their profession. They are economically exploited in the sale of their products at artificially low prices to dentists, while over 50% of the people in the United States who need dentures, chiefly the elderly, are unable to afford them.

Petitioners erroneously assert that such an issue has been decided by the United States Supreme Court and is binding on the

Seventh Circuit as a precedent.

Petitioners' contention that this action is that of dental technicians and not that of denturists is unsubstantiated. The Petitioners' attempt to equate denturists and dental technicians, (Petition for Certiorari, page 2), has no basis in the pleadings nor in the Seventh Circuit's decision. It is a distortion that is used in an attempt to equate the irrelevant facts in AAA Dental Laboratories, Inc. v. Illinois ex rel, Chicago Dental Society, 352 U.S. 863 (1956) and the instant case. A dental technician has only the ability to manufacture the denture while the denturist has that ability, plus the skill to fit the denture to the ultimate user. The relationship of dental technician to denturist is comparable of that of optician to optometrist. The Petitioners must concede, not oppose, before this court the properly pleaded factual existence of Denturism as established in Respondents' Complaint.

Petitioners also contend, on page 5, in their statement of the case, that "AAA had involved a denturist attack". This statement is an attempt to deceive the court, as the AAA case makes no reference to denturists, but rather deals with only dental technicians and dental laboratories.

The question raised by dental laboratories and dental technicians, and presented to the Court in AAA Dental Laboratories v. Illinois ex rel, Chicago Dental Society, 352 U.S. 863 (1956), was whether the Illinois statute, providing a dentist as a necessary broker between the dental technician and the ultimate consumer, created an economic relationship of legal dependancy that violated constitutional protections.

The crucial issue of the ability of denturists, a class of qualified persons who are not dentists, to fit dentures directly to the public was never involved in that litigation. The Seventh Circuit Court of Appeals has only required an evidentiary hearing in order to make that determination.

Petitioners in their arguments have also perpetrated a fraud upon the court by interposing a series of distortions of facts within their arguments.

On page 6, Petitioners allege that the profession of denturism has been held to be a public nuisance. No statute or case has made that determination. Petitioners also assert at page 5 of their petition that one-third of the Respondents have been found to have practiced dentistry without a license in Illinois. There is no basis in the record for such an assertion and it is totally improper. Further, the decision's effect on the dental practice acts of other states is totally irrelevant to whether the Seventh Circuit's decision was proper.

Petitioners also assert on page 10 of their petition that the AAA decision decided the "reasonability of ... The Dental Practice's Act prohibitions against direct dealing by non-dentists with the public." In reality the decision dealt only with the

prohibitions against dental technicians and dental laboratories, not non-dentists.

In addition, Petitioners seek to perpetrate a sophistry on this court when they assert on page 14, that "The Seventh Circuit omitted from its consideration the judgment and opinion of the Illinois Supreme Court in People v. AAA Dental Laboratories", when in fact the opinion makes reference in great detail to that decision.

ARGUMENT

I.

THE SEVENTH CIRCUIT COURT OF APPEALS DECISION IS NOT IN CONFLICT WITH THIS COURT'S DECISION IN AAA DENTAL LABORATORIES, INC. v. ILLINOIS EX REL, CHICAGO DENTAL SOCIETY, 352 U.S. 863 (1956), WHICH WAS DISMISSED FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION.

The Seventh Circuit Court of Appeals expressly stated its obligation with respect to application of controlling precedent in its opinion at footnote 2. The Court stated:

> "summary adjudications by the United States Supreme Court are decisions on the merits and if the issues there decided are the same as those raised here, they are controlling precendent. Hicks v. Miranda, 422 U.S. 332, 345 (1975); Chicago Sheraton Corp. v. Zaban,

593 F.2d 808 (7th Cir. 1979). (Emphasis added)

The Court carefully reviewed in great detail the AAA case as shown by the extensive footnote in the opinion. The Court noted that although the constitutionality of the same statute was in question in AAA, the issues involved were different from the instant case. Therefore, summary dismissal of AAA is not dispositive nor binding on the Court.

Specifically, the Court stated:

> "We have examined the jurisdictional statements and pleadings submitted on appeal to the Supreme Court in those cases, and we conclude that the issues on which the Court based its dismissals are not dispositive of the instant case. In AAA Dental Laboratories, v. Illinois ex rel. Chicago Dental Society, 352 U.S. 863 (1956), the due process issue was whether the

statute was rationally related to its purpose where the right of a dental technician to practice his occupation depended solely on whether he was employed by a dentist, without there being any statutory qualifications for technicians or requirement that a dentist supervise their work. The equal protection issue also concerned the lack of statutory qualifications for dental technicians, allegedly resulting in arbitrary decisions by dentists as to which technicians would be employed.

The due process and equal protection issues before the Court in Cordak v. Reuben H. Donnelly Corp., 365 U.S. 299 (1961), involved the Act's restriction of advertising by den-

tal technicians in business and telephone directories to name, address, and telephone number listings. Not disputing the legitimacy of preventing technicians from advertising to the public, appellants argued that the law was irrational because it prevented technicians from advertising important information to dentists as well.

In the instant case the issue is whether due process and equal protection are violated because denturists are prevented from providing denture care and advertising directly to the public. That issue is different from those before the United States Supreme Court in the AAA Dental Laboratories and Cordak cases and therefore those decisions are

not controlling." (Emphasis added).

Petitioners seek to persuade the Court that there exists an identity of both facts and legal issues in People ex rel Illinois State Dental Society v. AAA Dental Laboratories and the instant case. Petitioners state on page 8, that:

> "The Court misapprehended the true nature of the issues in AAA and that the purported difference in the case is a 'difference without a distinction.'"

And later on page 13, that:

> "Indeed, the present action seems to be 'on all fours' with the issue raised in AAA."

Respondents assert that the only similarities in these two cases are the fact that the Chicago Dental Society is a party in each and that the same law firm represented them in each case.

The AAA case, involved dental techni-

cians not denturists. While Petitioner seeks to equate the two professions, there is a marked difference.

Stedman's Medical Dictionary, 23 Edition, 1976, defines a denturist as a person other than a dentist, usually a technician, who engages in the practice of the denture phase of prosthodontics.

Petitioners' contention is analogous to arguing that an optician and an optometrist are one and the same. The facts do not support this conclusion. The State of Illinois could not so define the sale, examination and dispensing of eyeglasses to be solely the practice of Opthamology. This would prohibit a person also skilled in making and fitting of eyeglasses, the optometrist, from practicing his profession. Since the Opthamologist is a medical doctor, who treats conditions of the eyes, including the fitting of eyeglasses, and the optometrist is one who fits glasses, but does not treat the eye, to deny the existence of the

optometrist would be to prohibit optometry and exceed those police power guidelines regulating the States.

The same analysis applies to the dentist, denturist and dental technician. All three are capable of making the denture, although the dentist typically has the denture manufactured by a dental laboratory technician. It is only the dentist and denturist who have the skills to make and fit the denture. Thus a denturist not only has the skill to make a denture, but is also capable of fitting that denture to the ultimate consumer -- the denture wearer. The Respondents' contention is that to deny the existence of the denturist would be to exceed the police power of the State of Illinois. The Seventh Circuit has concluded that an evidentiary hearing is necessary to determine whether in fact the Respondents' contentions are correct.

Clearly the facts alleged here involving denturists rights are not the same as

were involved in the AAA case involving dental technicians.

Moreover, the legal issue involved is different as noted by the Court, supra. The issue in AAA was whether ... the statute was rationally related to its purpose where the right of a dental technician to practice his occupation depended solely on whether he was employed by a dentist, without there being any statutory qualifications for technicians or requirement that a dentist supervise their work. Whereas in this case, the issue is whether due process and equal protection are violated because denturists are prevented from providing denture care and advertising directly to the public. The instant case is akin to two cases cited and distinguished by the Illinois Supreme Court in People v. AAA Dental Laboratories, 8 Ill. 2d 330, 134 N.E.2d 285 (1956), People v. Brown, 407 Ill. 565, 95 N.E.2d 888 (1951),

and Schroeder v. Binks, 415 Ill. 192, 113 N.E. 2d 169 (1953). (See Petition for Certiorari pg. 103a).

In those cases, an Illinois statute regulated plumbers and classified them as masters or journeyman. A journeyman plumber could only work if employed or supervised by a master plumber. The Illinois Supreme Court struck down the statute as an unwarranted exercise of police power. The legislative regulations requiring journeyman to be supervised did not protect the public health, safety and welfare.

In People v. AAA Dental Laboratories, supra, the facts alleged did not establish an artificial restraint upon the dental laboratory technicians. They were merely limited in selling the product, they were qualified to make, but not fit, to the dentists. The Illinois Supreme Court held that this restriction related to the private economic relation in the market and not the statutory structure.

In the present case, the fact accepted by Petitioners clearly establish in great detail a hierarchial relationship whereby the denturist is limited by the statute not for the benefit of the public health, safety and welfare, but solely for the benefit of the dentist, in derogation of the public health, safety and welfare. No such evidence directly analogous to the economic injuries condemned in People v. Brown, supra, and Schroeder v. Binks, supra, ever appeared of record in the AAA case.

Certainly, the Seventh Circuit was correct in determining that AAA was not controlling precedent.

II.

THE SEVENTH CIRCUIT COURT OF APPEALS PROPERLY CONSIDERED THE OPINION AND JUDGMENT OF THE ILLINOIS SUPREME COURT OPINION IN PEOPLE v. AAA DENTAL LABORATORIES, 8 Ill. 2d 330, 134 N.E.2d 285 (1956).

Petitioners have extracted, out of context, two statements of the lower court

opinion. Those two statements appear on page 14 of their brief and are as follows:

> We have examined the jurisdictional statements and pleadings submitted on appeal to the Supreme Court in those cases, and we conclude that the issues on which the court based its dismissals are not dispositive of the instant case.

Op., Ct. of App. at n.2 (Appendix, pg. 7a).

and that:

> The rationale of a summary adjudication may not be gleaned from the opinion below.

Id.

Based on these two statements, Petitioners argue that the Court of Appeals did not properly consider the State court opinion in a case they assert is controlling prece-

dent.

Petitioners fail to point out another statement of the court, which makes clear that the court did look at the opinion and judgment of the Illinois Supreme Court case.

The court stated at footnote 2,

> In People v. AAA Dental Laboratories, 8 Ill.2d 330, 134 N.E.2d 285 (1956), the Illinois Supreme Court upheld the statute as constitutional, reversing in part and affirming in part a decision by the Illinois trial court that it was unconstitutional to prohibit dental technicians from selling dentures directly to the public but constitutional to permit only licensed dentists to take the necessary impressions, give

the order or prescription
and fit the dentures in the
patient's mouth.

The court then noted that with respect to the issues in the instant case they would only be bound by a decision of the Supreme Court of the United States. Further the court discussed at length (See Argument I, supra,) the fact that the issues raised in the AAA case were not dispositive of the instant case. Therefore, the AAA case was not controlling. Clearly the Seventh Circuit reviewed the judgment and opinion of the Illinois Supreme Court as well as the jurisdictional statements before the United States Supreme Court. The fact that the court discussed in detail the differences between that case and the instant matter demonstrates their concern with properly applying controlling precedent. From reading the Seventh Circuit opinion, it can only be concluded that the issues in AAA and the instant matter are not the same.

Therefore the Seventh Circuit's decision is correct.

CONCLUSION

For the reasons stated herein, Respondents respectfully pray this Honorable Court deny Petitioners' petition for writ of certiorari.

Respectfully submitted,

Sheldon Gardner
Attorney for Respondents

Sheldon Gardner
Richard S. Kuhlman
George C. Pontikes
FOSS, SCHUMAN & DRAKE
11 S. LaSalle Street
Chicago, Illinois 60603
(312) 782-2610
ATTORNEYS FOR RESPONDENTS

reply brief

TABLE OF CONTENTS

PAGE

Table of Authorities i

Argument 1

Table of Authorities

Cases:

AAA Dental Laboratories, Inc. v. Illinois ex rel Chicago Dental Society, 352 U.S. 863 (1956) 2, 4

Hicks v. Miranda, 422 U.S. 332 (1975) 4

People v. AAA Dental Laboratories, 8 Ill.2d 330, 134 N.E. 2d 285 (1956) 1, 2, 3, 4

Wise v. City of Chicago, 308 F.2d 364 (7th Cir.), *cert. denied* 372 U.S. 944 (1962) 3

Statutes:

Sec. 5, Illinois Dental Practice Act (Ill. Rev. Stat., 1977, ch. 111, sec. 2217) 1, 2

Sec. 5a, Illinois Dental Practice Act (Ill. Rev. Stat., 1977, ch. 111, sec. 2218) 1, 2

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No. 80-1602

THE ILLINOIS STATE DENTAL SOCIETY, ET AL.,
Petitioners,

vs.

HELEN SCHILLER, ET AL.,
Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit.

PETITIONER'S REPLY BRIEF

VIEWED IN THE CONTEXT OF §§ 5 AND 5a OF THE ILLINOIS DENTAL PRACTICE ACT, "DENTURISM" IS NOTHING MORE THAN ADMITTED ILLEGAL DENTISTRY, AND IS CONDUCT IDENTICAL TO THAT ENJOINED IN AAA. RESPONDENTS' MERE RELABELING OF THAT CONDUCT CANNOT ENABLE THEM TO ESCAPE THE AAA HOLDING.

This Reply Brief is compelled by an ambitious, albeit transparent, argument raised by Respondents in their Brief in Opposition in No. 80-1602, The Illinois State Dental Society, et al., v. Helen Schiller, et al—i.e., that by merely relabeling conduct long upheld by the courts as illegal one can somehow render that conduct less unlawful.

Respondents claim that "denturism" is somehow differentiated from the conduct at issue in *People v. AAA Dental Laboratories,* 8 Ill.2d 330, 134 N.E.2d 285, *appeal dismissed* 352 U.S. 863 (1956), and that this Court's dismissal of the *AAA* appeal, for want of a substantial federal question, does not therefore bar Respondents' present action. Such an attempted ruse, Petitioners submit, must not pass unrebutted.

Viewed in the context of §§ 5 and 5a of the Illinois Dental Practice Act, (Ill.Rev.Stat., 1977, ch. 111, sec. 2217 and 2218; *see* Petition for Writ, at 39a-43a for text), "denturism" is nothing more than admitted illegal dentistry. Obscured, but not overcome, by Respondents' irrelevancies and self-serving acclamations about denturism remains one essential fact: the acts which constitute Respondents' alleged "profession"—i.e., the taking of impressions for and fitting of dental prostheses for the public by non-dentists—are identical to those acts which the defendant dental technicians were enjoined from performing in *AAA*. The subject conduct was in violation of the Illinois Dental Practice Act at the time the *AAA* case was initiated and remains so today, the only difference being that in the interim both the Illinois Supreme Court and the United States Supreme Court have stamped the provisions which proscribed that conduct as constitutional.

Respondents argue that "in reality," *AAA* "dealt only with the prohibitions against dental technicians and dental laboratories, not non-dentists." Brief in Opposition, at 8-9. Respondents would have this Court believe that the Illinois Supreme Court's inability to divine the particular labels which non-dentists might later assume somehow limits *AAA's* application to prohibited acts by any and *all* non-dentists. The following passage from *AAA* demonstrates otherwise:

> The evidence establishes that the knowledge and skill *of the dentist* is necessary in the diagnosis of the case, the taking of impressions, the issuance of instructions to the laboratory and the testing, fitting and adjustments of a prosthetic denture. . . . In our opinion the power of the legislature is not exhausted when it has provided that there shall be professional supervision at the *inception and the conclusion of what is essentially a single process. It may, if it sees fit, go further and insure that responsibility to the patient shall not be fragmented, and it may focus that responsibility upon a member of the profession which it regulates.*

People v. AAA Dental Laboratories, 8 Ill.2d 330, 334-35, 134 N.E.2d 285, 289 (1956) (emphasis supplied); (*see* Petition for Writ, at 102a). That "profession" is, of course, dentistry.

Clearly, the *AAA* case applies with equal force to non-dentists of *all* stripes, the focus being on those persons' conduct, not their calling cards. That the Seventh Circuit adopted the "denturist" nomenclature in its opinion has, therefore, no significance whatsoever beyond identifying the "non-dentists" in their latest incarnation.

Petitioners are not, as Respondents argue, bound to "concede, not oppose, before this Court the properly pleaded factual existence of Denturism as established in Respondents' Complaint." Brief in Opposition, at 6. Respondents' attempt to escape *AAA* by assigning a new label to long-prohibited acts constitutes an argumentative and conclusory averment rather than a factual allegation, and as such is not admitted by a motion to dismiss. *Wise v. City of Chicago*, 308 F.2d 364 (7th Cir.), *cert. denied* 372 U.S. 944 (1962). The principle stated in *Wise* finds particular application here, for it would be ludicrous to foist upon Petitioners as "admitted"

everything in the over 500 pages of irrelevancies, evidentiary offerings, and argumentative conclusions in Respondents' rambling complaint.

In the final analysis, Respondents' asserted differentiation between "denturism" and the acts made the subject of the *AAA* decision is only an elaborate subterfuge, a "house-of-cards" much akin to Respondents' complaint in general. Shorn of its many irrelevancies about the illegal business Respondents today call "denturism," Respondents' action boils down to nothing more than a replay of the challenge made by the non-dentists in *AAA* to the legislative judgment embodied in the Illinois Dental Practice Act. Unfortunately for Respondents, their attempted end-run around that judgment has been blocked by this Court's dismissal of the *AAA* appeal and by the principle of *Hicks v. Miranda,* 422 U.S. 332 (1975).

The present action being "on all fours" with that previous dismissal, this Court should grant the Writ of Certiorari requested, and reverse the decision of the Court of Appeals.

Respectfully submitted,

Russell M. Pelton
Counsel for Petitioners

Mary Patricia Chapin
Craig A. Varga
Peterson, Ross, Schloerb & Seidel
Suite 7300
200 East Randolph Drive
Chicago, Illinois 60601
(312) 861-1400
Attorneys for Petitioners

May 7, 1981